

Edra D. Blixseth - December 17, 2009

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

_____)	
In re)	
)	
)	
EDRA D. BLIXSETH,)	Case No.: 09-60452-RBK
)	
Debtor.)	
_____)	
In re Yellowstone Club, LLC,)	
Debtor)	
)	
TIMOTHY L. BLIXSETH,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 09-00014
)	
OFFICIAL COMMITTEE OF UNSECURED)	
CREDITORS,)	
)	
Defendant.)	
_____)	

Deposition of:	EDRA D. BLIXSETH
Date:	December 17, 2009
Reported by:	Stephanie P. Borthwick C.S.R. No. 12088

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Deposition of EDRA D. BLIXSETH, taken on behalf of
the Plaintiff, before Stephanie P. Borthwick, a
Certified Shorthand Reporter, commencing at the hour of
9:14 a.m., Thursday, December 17, 2009, at the offices
of Yates Court Reporters, 74-967 Sheryl Avenue,
Palm Desert, California.

APPEARANCES:

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18 Timothy L. Blixseth

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Q. Did Mr. Scalia purchase a Bentley from Desert European Motors based on funds that you had wire-transferred to him in the amount of roughly \$220,000?	17	7
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Q. Did you report on your income tax return a gift of \$220,000 wire-transferred to Mr. Scalia?	17	21
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Q. The amount was 230,000 that you wire-transferred. Did you do that, Ms. Blixseth?	18	2
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1 Q. Did Mr. Scalia report it as income? 18 7

2 Q. Within the two-year period prior to 18 13

3 your filing your bankruptcy petition,
4 Ms. Blixseth, did you transfer or give
5 to Mr. Scalia approximately \$450,000?

6 Q. Would it surprise you if I told you it 19 9
7 is in the range of close to half
8 a million dollars?

9 Q. Is any of that cash -- was any of that 22 3
10 cash given to Mr. Scalia?

11
12 Answer Requested Marked: Page Line

13 A. Well, I don't know how to answer 36 8
14 that, because I didn't have anything to
15 do with fake letters. Tim Blixseth
16 actually is the one that reached out to
17 me to say he'd like to get a copy of
18 those and I tried to get a copy of
19 them.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

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1 EDRA D. BLIXSETH,
2 having been first duly sworn by the court reporter,
3 was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. FLYNN:

7 Q. State your name, please.

8 A. Edra Blixseth.

9 Q. Ms. Blixseth, have you concealed any cash
10 amounts that are not reported on your bankruptcy
11 schedules?

12 A. No, none.

13 Q. Have you made any cash transfers within the
14 last year?

15 MR. DESCHENES: I'm going to object. The scope
16 of this deposition, Mike -- this must be why you're
17 starting with these questions -- is for your adversary.
18 It is not regarding the adversary that you filed
19 regarding objection to her discharge.

20 This is regarding the Yellowstone case and the
21 Snow case, none of which are these answers to these
22 questions relevant.

23 BY MR. FLYNN:

24 Q. Please answer, Ms. Blixseth.

25 MR. DESCHENES: I'm instructing her not to

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1 answer.

2 MR. FLYNN: In order not to delay,
3 Mr. Deschenes, I'm going to move forward, but that
4 obstruction -- I will state for the record once is
5 obstructing our discovery, the overall defenses involved
6 here, in pari delicto, unclean hands, a large scheme by
7 Ms. Byrne -- by Mr. Byrne and Ms. Blixseth to basically
8 steal the Yellowstone Club is what's at issue and are
9 the defenses in Adversary 14 and 18 and this question is
10 directly germane.

11 Q. Ms. Blixseth, did you --

12 MR. COTNER: Mike --

13 MR. FLYNN: Gary, I'm moving forward. You
14 state your objections under the rules.

15 MR. COTNER: -- this is Dave Cotner. I just
16 want to introduce myself. The court reporter had asked
17 for all the participants and Paul had given his answer
18 and information and then everybody chimed in.

19 And I just wanted the record to reflect that
20 Dave Cotner is also on the phone reflecting --
21 representing Dick Samson as Trustee of the Edra Blixseth
22 bankruptcy estate.

23 And, Court Reporter, I didn't catch your name,
24 but I'm happy to get you my information with respect to
25 my firm during a break, if that would help you.

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1 THE REPORTER: Thank you.

2 MR. COTNER: Thank you.

3 BY MR. FLYNN:

4 Q. Ms. Blixseth, did you write out a \$225,000
5 check to Jack Scalia to purchase a Bentley?

6 A. No.

7 Q. Did Mr. Scalia purchase a Bentley from Desert
8 European Motors based on funds that you had wire-
9 transferred to him in the amount of roughly \$220,000?

10 MR. HOLAHAN: I don't think -- I don't think
11 this has anything to do with the case that we're here
12 on, so I'm going to object to that question.

13 And if we can't limit the scope, the proper
14 scope of the deposition now, we just should stop, Mike,
15 and call the judge. You've done it before; let's do it
16 again.

17 No, she's not going to answer the question.

18 MR. FLYNN: You're instructing her?

19 MR. HOLAHAN: Yeah.

20 BY MR. FLYNN:

21 Q. Did you report on your income tax return a gift
22 of \$220,000 wire-transferred to Mr. Scalia?

23 MR. HOLAHAN: She's not going to answer that
24 question.

25 ///

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1 BY MR. FLYNN:

2 Q. The amount was 230,000 that you wire-
3 transferred. Did you do that, Ms. Blixseth?

4 MR. HOLAHAN: She's not going to answer that
5 question.

6 BY MR. FLYNN:

7 Q. Did Mr. Scalia report it as income?

8 MR. HOLAHAN: How would she possibly know?
9 She's not going to answer that question for the same
10 reason. This is beyond the proper scope of this
11 deposition, as you well know.

12 BY MR. FLYNN:

13 Q. Within the two-year period prior to your filing
14 your bankruptcy petition, Ms. Blixseth, did you transfer
15 or give to Mr. Scalia approximately \$450,000?

16 MR. HOLAHAN: There are going to be no
17 questions about Mr. Scalia that she's going to answer.
18 It's an invasion of privacy and has nothing to do with
19 the scope of this deposition, so you can go ahead and
20 ask and she's not going to answer.

21 BY MR. FLYNN:

22 Q. Ms. Blixseth, did you, within the two years
23 before your filing bankruptcy, take out approximately
24 \$9,000 routinely virtually every week during 2007, 2008,
25 in cash from your bank accounts?

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1 MR. HOLAHAN: You can answer that, if you know.

2 THE WITNESS: Every week, no.

3 BY MR. FLYNN:

4 Q. Virtually every week?

5 A. No.

6 Q. How much money for the two years before you
7 filed bankruptcy did you take out in cash?

8 A. I don't know.

9 Q. Would it surprise you if I told you it is in
10 the range of close to half a million dollars?

11 MR. HOLAHAN: If you're going to testify, we
12 can swear you in and then you can testify instead of
13 her. We're not going to proceed down this road, Mike.
14 This is not about her bankruptcy, so she's not going to
15 answer any questions.

16 MR. FLYNN: Concisely, and then you be quiet,
17 Mr. Holahan.

18 MR. HOLAHAN: No, I won't be quiet. Don't tell
19 me to be quiet.

20 BY MR. FLYNN:

21 Q. Ms. Blixseth --

22 MR. HOLAHAN: I'm not through.

23 BY MR. FLYNN:

24 Q. -- what did you do with the cash?

25 MR. HOLAHAN: Don't tell me to be quiet. I

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1 represent her. If I have an objection to any of your
2 questions, you're going to listen to the entire
3 objection -- even if takes seven hours -- and then we'll
4 leave, so don't try to tell me to be quiet.

5 MR. FLYNN: Mr. Holahan, you're obstructing and
6 prejudicing my client's rights.

7 MR. HOLAHAN: You're out of record.

8 BY MR. FLYNN:

9 Q. Ms. Blixseth, what did you do with the cash
10 that you took out in the two years prior to filing
11 bankruptcy?

12 MR. HOLAHAN: Object to the form of the
13 question. It's irrelevant and beyond the scope of
14 this -- this case and this exam.

15 You can answer if you know. It's also vague,
16 overbroad. If you -- if you can possibly --

17 THE WITNESS: I don't know.

18 BY MR. FLYNN:

19 Q. Did you deposit it into any other bank
20 accounts?

21 A. Not that I recall.

22 Q. How did you spend it?

23 A. A variety of ways.

24 Q. What are the variety of ways?

25 A. I don't really recall.

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1 Q. So for two years if you were taking out
2 routinely \$9,000, you don't know what you were doing
3 with it; is that your testimony?

4 A. That's not my testimony; that's your testimony.
5 My testimony was I don't recall and my testimony was I
6 did not take out 9,000 a week.

7 Q. How much did you take out?

8 A. I'm not sure.

9 Q. What's your best estimate?

10 A. I'm not sure. I don't want to guess on
11 answering questions.

12 Q. More than a hundred thousand dollars or less?

13 A. I don't want to guess on answering questions.

14 Q. More than \$500,000 or less?

15 A. My answer is the same.

16 Q. And you have no idea what you did with that
17 money; is that correct?

18 A. I didn't say that. I said I don't recall.

19 Q. Did you give any of that cash to your children?

20 A. I don't recall.

21 Q. Is any of that cash currently in bank accounts
22 that you have not reported on your bankruptcy schedules?

23 A. No.

24 I mean, do you want me to answer?

25 But no.

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1 MR. HOLAHAN: Let him ask two more.

2 BY MR. FLYNN:

3 Q. Is any of that cash -- was any of that cash
4 given to Mr. Scalia?

5 MR. HOLAHAN: She's not going to answer any
6 questions about Mr. Scalia. That's beyond the scope of
7 this and it's an invasion of privacy.

8 MR. FLYNN: Okay. It's on the record and we'll
9 take that up with the judge at the appropriate time.

10 MR. HOLAHAN: Good.

11 BY MR. FLYNN:

12 Q. Did you graduate from Manteca High School?

13 A. No.

14 Q. Have you testified before that you graduated
15 from Manteca High School?

16 A. No, I just finally graduated from high school.

17 Q. What high school did you graduate from?

18 A. San Leandro.

19 Q. What year did you graduate from that high
20 school?

21 A. I'm trying to think of the year.

22 '72 or '73.

23 Q. You were given notes by Michael Sandoval in the
24 approximate amount of \$8 million to resolve claims
25 between you and Mr. Sandoval; is that correct?

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1 A. There were notes given, I don't recall exact
2 amounts.

3 Q. What is your best estimate of the amounts?

4 A. I think there was one for 5- and then there was
5 another one and I don't remember what that amount was.

6 Q. Was it for 3-?

7 A. I don't recall.

8 Q. Okay. Where, physically, are those notes
9 today?

10 A. I would assume they're in the -- I would assume
11 they're in the files with the settlement with Opsprings
12 and xPatterns, but I'm not positive. I didn't -- Jory
13 had them and Jory is not with us, so I'm not sure.

14 Q. Did you give the notes to Mr. Samson?

15 A. He's aware of them. I don't -- I don't think
16 that he has them physically.

17 Q. Who do you think has them?

18 A. I just said I'm not -- I'm not sure.

19 Q. You said they're in the files, I believe, of
20 Opsprings. Who has those files?

21 A. I believe Pat would have those now. Jory had
22 them and so most of the things Jory had Pat now has, Pat
23 Yarborough.

24 Q. Is Pat Yarborough the same Pat Yarborough --
25 the Pat Yarborough that is currently your bookkeeper, is

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1 that the same Pat Yarborough that has been convicted of
2 embezzlement?

3 A. I have no idea.

4 Q. When did you hire Pat Yarborough?

5 A. I didn't hire Pat Yarborough. Jory brought
6 Yarborough on and I don't recall when it was.

7 Q. Is it your testimony that Jory Russell made the
8 decision and not you?

9 A. He brought her to me as a recommendation to be
10 hired and I okayed it.

11 Q. What did you know about her background when you
12 brought her on?

13 A. Just the information that I had been given
14 through Jory and I believe -- I believe at that time it
15 was either Steve Crisman and/or Nick Rhodes that were
16 part of that as well, but they just gave me the
17 information and recommended her.

18 Q. Did you get a resume?

19 A. I don't think I ever saw her resume, but I may
20 have. I don't recall.

21 Q. Has she concealed any funds for you?

22 A. No, she has not.

23 Q. Has she diverted any funds to bank accounts
24 that are not reported on your schedules?

25 A. No, she has not.

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1 Q. And do you have any knowledge or understanding
2 from any source about her prior criminal background?

3 A. You keep referring to that she has a criminal
4 background. I'm not aware of any criminal background,
5 so I can't answer that.

6 Q. Okay. Who currently has -- strike that.
7 Where are the Opspring files with the Sandoval
8 notes?

9 A. I think I answered that. I'm assuming they're
10 with the things that Jory turned over that were with his
11 records, but I'm not sure.

12 Q. I believe what you testified to was that
13 they're with, the Opspring files are with Pat
14 Yarborough; is that correct?

15 A. You asked me again, so I thought maybe you
16 wanted further explanation of that.

17 Q. I do. Where are those files, Ms. Blixseth?

18 A. They're with all the other files of the
19 companies and BGI and everything with Pat.

20 Q. Where?

21 A. At Pat's home office.

22 Q. Where is her home office?

23 A. I don't have the address in my head.

24 Q. What country is it in, Ms. Blixseth?

25 A. It's in the United States.

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1 Q. What state is it in?

2 A. California.

3 Q. What city is it in?

4 A. She lives in the LA area, but I'm not sure of
5 the exact city. There's a lot of cities in LA.

6 Q. So is it your testimony she has all of the
7 Opspring Blxware files and you don't even know what city
8 they're in? Is that your testimony?

9 MR. HOLAHAN: That's -- I'm going to object to
10 that question. The form of that question is
11 argumentative and it misstates her testimony.

12 BY MR. FLYNN:

13 Q. Okay. Do you have your cell phone here with
14 you?

15 A. No, I do not.

16 Q. How do we find Ms. Yarborough?

17 A. I have an address in my office and there's a
18 phone number.

19 Q. Okay. At the break --

20 A. Sam -- Dick Samson has all of her information,
21 her email address. He's got everything.

22 Q. What is your best understanding of where
23 Ms. Yarborough lives?

24 A. In the LA area.

25 Q. When did she get possession of all the Opspring

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1 Blxware files?

2 A. I'm having to guess on this, but I'm assuming
3 when Jory Russell -- you asked two different questions.

4 MR. HOLAHAN: If you don't know, don't guess.

5 THE WITNESS: Okay.

6 MR. HOLAHAN: If you don't know, just say you
7 don't know.

8 THE WITNESS: I'm not sure.

9 BY MR. FLYNN:

10 Q. Is it a fact that Jory Russell turned over all
11 the files to you, Ms. Blixseth?

12 A. Jory Russell turned over no files to me.

13 Q. What is your best understanding of how many
14 files comprise the Opspring Blxware files?

15 A. I really don't know. Other people handled that
16 and I only asked for things when I needed it for
17 specific things.

18 Q. So if Mr. Russell testified he turned over
19 everything to you, is he incorrect?

20 A. I just said nobody turned over files to me.

21 Q. Do you have any Opspring Blxware files at
22 Porcupine Creek?

23 A. Not that I'm aware of.

24 Q. Do you have any of those files at any of your
25 other locations?

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1 A. I don't have any other locations.

2 Q. Do you own homes in Montana?

3 A. No, I don't.

4 Q. Do you have any files at all at Porcupine
5 Creek?

6 A. I didn't really retain files. The files stayed
7 in the offices and when I needed something, somebody
8 would email me the information or send me the
9 information, I'd use it and return the files.

10 I don't have a file-keeping system right now.

11 Q. Have you made any effort to find the Michael
12 Sandoval notes, the actual notes he gave you?

13 A. You keep asking me about those and I keep
14 saying that I'm assuming Jory had them. I'm assuming
15 Jory gave them to Pat. Nobody has asked me to find
16 those notes and do something with them.

17 Q. When did you first meet Michael Sandoval?

18 A. Right before I met you, so whatever time frame
19 that was.

20 Q. When did you first meet Dennis Montgomery?

21 A. Same day I met you.

22 Q. Now in late 2005 you were in possession of
23 proceeds of the Credit Suisse loan; is that correct?

24 A. I wasn't personally, no.

25 Q. Did you have access to any of the proceeds of

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1 the Credit Suisse loan in late 2005?

2 A. If Tim made any proceeds available to me for
3 specific things then I would have access to, but only
4 through Tim.

5 Q. In early 2006 how much money did you give to
6 Michael Sandoval and Dennis Montgomery from the Credit
7 Suisse loan proceeds?

8 A. I don't know if it was from the Credit Suisse
9 loan proceeds. It came through from Tim wiring the
10 money in, but I believe the initial part was \$5 million.

11 Q. And that was an investment in the technology
12 companies?

13 A. Correct.

14 Q. And those technology companies were Azimyth,
15 xPatterns and Opspring?

16 A. That is not correct.

17 Q. What is incorrect about that, those three
18 companies?

19 A. There was never an investment in Azimyth.

20 Q. Only in Opspring and xPatterns?

21 A. Correct.

22 Q. How much did you invest?

23 A. I believe there were two payments of 5 million
24 that were divided between xPatterns and Opsprings. I
25 don't recall without notes in front of me exactly

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1 when -- xPatterns came first, Opsprings came second and
2 it was additional monies after that as well.

3 Q. As you sit here today is it your testimony,
4 Ms. Blixseth, that you do not know that those monies
5 came from the Credit Suisse loan?

6 A. I know they came out of bank accounts that Tim
7 set up that -- some of which were opened and remained
8 open with some of the funds of Credit Suisse loans, but
9 I don't know what other monies went in or out of there,
10 no.

11 Q. What was the total amount of your investment in
12 the technology company?

13 A. I believe it was around 16 million.

14 Q. When did you first obtain possession of the FBI
15 reports indicating that Dennis Montgomery and the
16 technology he purportedly possessed were fraudulent?

17 A. You're going to have ask that question again.

18 Q. When did you first see the FBI reports that
19 disclosed that Dennis Montgomery and any technology he
20 possessed was a fraud?

21 A. I have not to this day seen FBI reports that
22 said that they were a fraud.

23 Q. When were you first put on notice,
24 Ms. Blixseth, that Dennis Montgomery could not write
25 source code and that he was a fraud?

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1 A. I was never put on notice that he was a fraud.

2 Q. Did you have a meeting with Joseph Jonas, a
3 sit-down, face-to-face meeting with Joseph Jonas, in
4 January 2007 where he told you that Montgomery did not
5 possess any of the technology that he had represented to
6 you?

7 A. I don't recall who Joseph Jonas is.

8 Q. So is it your testimony you don't recall the
9 meeting?

10 A. I don't recall who he is, so I certainly
11 wouldn't recall a meeting.

12 Q. Do you recall a meeting in your office on
13 April 12th and 13th, 2009, with Jack Kemp and myself and
14 Dennis Montgomery where we reviewed the FBI reports?

15 A. In 2009?

16 Q. Strike that.
17 2007.

18 A. In what office?

19 Q. In your office at Porcupine Creek on the second
20 floor.

21 A. I don't recall that.

22 Q. How much did you initially loan to Dennis
23 Montgomery?

24 A. There was an employment contract with Dennis
25 Montgomery that Michael Sandoval had drawn up, had legal

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1 counsel draw up, and there was a signing bonus for
2 Dennis and I believe it was either a million or a
3 million and a half. I don't recall specifically which
4 one it was.

5 And then it was talking about his salary, which
6 was a hundred thousand a month. He had the right to
7 additional loans or bonuses based on performance and
8 turning over certain specific things that I don't think
9 that he ever actually got.

10 He got some additional monies when he was
11 purchasing a home, but I don't recall the exact amount.

12 Q. Okay. Did you give him loans totaling
13 \$3 million in April of 2006?

14 A. I don't believe so, no.

15 Q. What is your best memory of the total amount of
16 money you loaned to him from Credit Suisse loan proceeds
17 in April 2006?

18 A. I can't testify to anything from Credit Suisse
19 loan proceeds. They came from the Tim Blixseth personal
20 account into -- wiring into the xPatterns or Opsprings
21 accounts.

22 Q. Did Mr. Blixseth tell you that he opposed this
23 investment and didn't want you to use the Credit Suisse
24 loan proceeds to give to Mr. Montgomery?

25 A. No, he did not.

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1 Q. What is your best memory, regardless of the
2 source of the funds, as to how much you loaned Dennis
3 Montgomery in April 2006?

4 A. I've already testified to that. My best
5 recollection is it was a signing bonus, which was either
6 a million or a million and a half, and I don't recall
7 which one it was.

8 Q. So that was a loan?

9 A. That was part of -- I think it was a signing
10 bonus, actually. If it was a loan, it was a loan. I
11 don't remember the contract. There's been a lot of
12 contracts and things between that time frame so --

13 Q. Did you ever forgive that loan?

14 A. No, I did not.

15 Q. Did you report those loans on your bankruptcy
16 schedules?

17 A. Those were monies that were into corporations
18 that I reported what was invested in the corporations,
19 but it wasn't for me personally.

20 Q. Are those loans still outstanding?

21 A. That's within the Opsprings Blxware books. I'd
22 have to go back and look. To the best of my knowledge,
23 if that's how they were and they weren't signing
24 bonuses.

25 Q. Just so we're clear, Ms. Blixseth, the loans

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1 have never been forgiven; is that correct?

2 A. I'm telling you I'm not sure if they were loans
3 or signing bonuses. I'm telling you that I'm not aware
4 if they were loans of any monies being repaid from
5 Dennis Montgomery to the companies. It wasn't to me,
6 personally.

7 Q. Did Mr. Montgomery ever turn over to you the
8 source codes that were being given to you in exchange
9 for those loans?

10 A. The reason he wasn't given the additional
11 money, whether it was loans or not loans, was because
12 the source codes had not been turned over.

13 Q. To this day have the source codes ever been
14 turned over?

15 A. Not to my knowledge.

16 Q. And what is the total amount of money you have
17 given either in loans or salary, signing bonuses or any
18 other characterization to Dennis Montgomery as we sit
19 here today?

20 A. I don't recall off the top of my head.

21 Q. Is it over \$5 million?

22 A. No, it's not.

23 Q. Isn't it a fact -- strike that.

24 How long did you continue to pay him a hundred
25 thousand dollars a month?

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1 A. Until we couldn't afford to keep the company
2 running.

3 Q. Yeah. When was that?

4 A. I think April or May of this year.

5 Q. So from April '06 to April or May of '09 you
6 paid him a hundred thousand dollars a month; is that
7 correct?

8 A. That is correct.

9 Q. What role, if any, did you play in having him
10 arrested for the \$1.9 million casino fraud that he was
11 involved in?

12 A. I had no role in it.

13 Q. In the last 60 days have you been texting
14 messages with Mr. Montgomery?

15 A. Yes, I have.

16 Q. Have you texted messages with Mr. Montgomery
17 relative to the fake target letters that you and he
18 contrived to try to destroy the --

19 MR. HOLAHAN: Stop. Stop.

20 BY MR. FLYNN:

21 Q. -- sale of the Yellowstone Club?

22 MR. HOLAHAN: Objection to that question. It
23 assumes facts not in evidence and this entire line of
24 questioning, I think, is beyond the scope of this
25 deposition.

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1 I don't know how you want to answer that
2 question or if you want to answer it. You want to --

3 Could you read that question, back, please.

4 THE REPORTER: Question, "Have you texted
5 messages with Mr. Montgomery relative to the fake target
6 letters that you and he contrived to try to destroy the
7 sale of the Yellowstone Club?"

8 ** THE WITNESS: Well, I don't know how to answer
9 that, because I didn't have anything to do with fake
10 letters. Tim Blixseth actually is the one that reached
11 out to me to say he'd like to get a copy of those and I
12 tried to get a copy of them.

13 MR. FLYNN: Would you mark that, please.

14 Q. You just testified you didn't have anything to
15 do with the fake letters.

16 Is that truthful testimony, Ms. Blixseth?

17 A. You just asked me if I had contrived and had
18 something to do with making the fake letters. If you're
19 asking if I was aware of the letters -- I can't answer
20 your question the way you worded it.

21 Q. When did you first become aware of the letters,
22 Ms. Blixseth?

23 A. Dennis told me he -- actually, I'm only aware
24 of one. Dennis told me he had a letter saying that Tim
25 had received a target letter that he was being

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1 investigated.

2 Q. The question was "when," Ms. Blixseth?

3 A. I don't remember. It was quite a while ago.

4 Q. What does "quite a while ago" mean?

5 A. I think it was sometime in '07, but I don't
6 really recall.

7 Q. Was the discussion about the fake letters --

8 A. I didn't know them to be fake. I only knew
9 that there was letter that was told -- I was told there
10 was a letter, so I can't answer. When you say fake
11 letters I can't answer that in that way. I don't know
12 to this day they're fake.

13 Q. In the last three months have you received any
14 notification from any state or federal agency as to
15 whether you are the subject of a state or federal
16 investigation of any type?

17 A. No, I have not.

18 Q. In the last 30 days have you had any
19 conversations with Mr. Blixseth about the fake target
20 letters?

21 A. Well, you keep referring to fake. I've had
22 conversations with him and I've had texts with him about
23 the letters. He wanted the letters. He called me, he
24 texted me and said it meant a lot to him to get them and
25 I said, "I don't have them. Why don't you do a deal

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1 with Dennis and see if you can get them?"

2 I tried to help him do that.

3 Q. When you first learned about the letters, and I
4 believe your testimony was sometime in '07, who did you
5 learn about it from?

6 A. Dennis Montgomery.

7 Q. This was when you were paying him a hundred
8 thousand dollars per month?

9 A. I think I've already answered that, that he was
10 being paid a hundred thousand dollars a month working
11 for the technology company.

12 Q. Did you know at that time that he was hacking
13 into computers on your behalf, namely late '07?

14 A. I'm not aware of him ever hacking to this day
15 into computers and -- nor on my behalf.

16 Q. Isn't it correct, Ms. Blixseth, that given all
17 of the money you've paid Mr. Montgomery, including the
18 hundred thousand dollars a month in salary, that he has
19 never produced any source code or any technology or any
20 product that you've been able to market to anybody?

21 A. No. That is not true.

22 Q. How much money have you paid Mr. Montgomery in
23 the year 2009?

24 A. I think he got his salary. He was owed back
25 salary when I couldn't pay starting, I believe it was,

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1 September, October, for the burn rate of Blxware.

2 He got that caught up, I believe, it was in
3 January and then after that I still didn't have money to
4 be paying him. Some funds did come in on something we
5 were working on and, to the best of my knowledge, he
6 was -- his salary was paid through, I think, May or June
7 of this year.

8 Q. When the \$2.5 million was paid by the
9 government, the United States government, for the return
10 of the archives that Mr. Montgomery had in his
11 possession in February of 2009, how much of that
12 \$2.5 million did you give to Montgomery?

13 A. That wasn't what the money was for.

14 Q. Is that truthful testimony, Ms. Blixseth?

15 MR. HOLAHAN: Yours or hers?

16 MR. FLYNN: Hers.

17 Q. Is it truthful testimony that the 2.5 million
18 was not for the return of the archives?

19 A. No, it was not.

20 Q. Now how much of the 2.5 million, regardless of
21 the designation of the funds, went to Montgomery?

22 A. I'm not sure that the instructions were to get
23 everyone paid current when the money came in. There
24 were certain people loaned money for Blxware to continue
25 during that time. The instructions were to get them

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1 paid back for loaning the money to keep it going, so I
2 really don't have an accounting of exactly what Dennis
3 Montgomery got.

4 It was supposed to be his back salary and any
5 out-of-pocket expenses that he had not been reimbursed.

6 Q. Was it approximately \$600,000?

7 A. I don't have it in front of me. I don't know.

8 Q. Well, was it approximately \$600,000?

9 A. Same answer.

10 Q. Okay. At the time he got the money was he in
11 Washington, DC, and did he email you that he was
12 resigning from Blxware?

13 MR. HOLAHAN: Which question do you want her to
14 answer first?

15 MR. FLYNN: Both.

16 MR. HOLAHAN: Okay. You want to divide it up
17 into two questions.

18 BY MR. FLYNN:

19 Q. When he got the money, did he resign from
20 Blxware?

21 A. Dennis is emotionally volatile, so I don't
22 know. He could have -- he could have done that, but I'm
23 not -- I'm not aware of getting a resignation from him
24 at that time, no.

25 Q. Are you aware that an article's coming out in

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1 Playboy Magazine relating to Mr. Montgomery's fraud in
2 connection with the technology we're discussion?

3 A. Tim Blixseth told me about the article and I
4 was -- through my PR person was approached by the
5 reporter, but I'm not ware of anything about the article
6 and I never spoke to the reporter.

7 Q. Okay. As you sit here today, Ms. Blixseth,
8 have you inquired of Mr. Montgomery whether his
9 technology is legitimate or fraudulent?

10 A. Have I inquired?

11 Q. Yeah. Have you ever asked him, "Is it real,
12 Dennis?"

13 A. Years ago, yes.

14 Q. You sent him many emails asking whether it was
15 real, didn't you, Ms. Blixseth?

16 A. I would not say that's true. That's not a
17 correct response, no.

18 Q. The answer is no?

19 Let's go back to the target letters. Did you
20 send or read the target letters to Lisa Myers of NBC?

21 A. No.

22 Q. Did Lisa Myers visit you in early March 2008
23 just before Mr. Byrne terminated the sale of the
24 Yellowstone Club and you gave her a copy of the fake
25 target letters?

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1 A. That is not correct.

2 Q. Did you give a copy or read a copy of the fake
3 target letters to Jim Popkin during the early part of
4 2008, Ms. Myers' executive producer?

5 A. Not that I recall.

6 Q. You may have, but you don't recall?

7 A. I -- I -- not only do I not recall, I don't
8 have any recollection at all of doing that.

9 Q. John Wilke, you knew Mr. Wilke before he passed
10 on?

11 A. Yes, I did.

12 Q. And you, in fact, had fed Mr. Wilke information
13 relating to Governor Gibbons and purported bribes; is
14 that correct?

15 A. That is not correct.

16 Q. Did you engineer the Wall Street Journal
17 article on November 1, 2006, relating to Governor
18 Gibbons?

19 A. Absolutely not.

20 Q. Did you pass -- did you have any discussions
21 with Mr. Wilke prior to November 1, 2006, relative to
22 the bribery of Governor Gibbons?

23 A. I don't have any information on that. John
24 Wilke's name was given to me on, at that time, our boat
25 by Robert Frank with Wall Street Journal saying he would

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1 be someone that might be interested in looking at what
2 Dennis was saying with the allegations.

3 Q. During the settlement with Warren Trepp where
4 you confessed \$26.5 million in judgments, did
5 Mr. Montgomery withdraw his allegation that Trepp had
6 bribed Gibbons?

7 A. I don't believe so.

8 Q. Did you confess to a \$5 million judgment
9 relating to defamation in connection with Montgomery's
10 claims that Trepp had bribed Gibbons?

11 A. There was discussion from Warren Trepp's -- it
12 was important to Warren Trepp's wife that something be
13 acknowledged of that because of the press and I don't
14 remember how it was worded, but it was not worded where
15 Dennis had to take back anything that he had stated.

16 Q. Did he admit during those settlement
17 discussions that he had fabricated two emails
18 purportedly from Warren Trepp or his wife relating to
19 the bribery of Gibbons?

20 A. Not only did not admit that he had fabricated
21 them, he told me that he absolutely did not fabricate
22 them.

23 Q. When did he tell you that?

24 A. When I asked him when we were there.

25 Q. Prior to November 1, 2006, did you talk to him

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1 about the emails and whether or not he had fabricated
2 them?

3 A. I talked to him about -- in general about
4 anything that -- is there anything to do with the things
5 that you're saying happened that's not true and he told
6 me that it was all true.

7 Q. With regard to John Wilke, did you give a copy
8 of the fake target letters to John Wilke of the Wall
9 Street Journal?

10 A. I did not.

11 Q. Did you read the fake target letters to John
12 Wilke?

13 A. I did not.

14 Q. Did you have Dennis Montgomery give a copy of
15 the fake target letters to John Wilke?

16 A. I didn't have Dennis Montgomery do anything.

17 Q. Did you have Dennis Montgomery give Lisa Myers
18 a copy of the fake target letters?

19 A. I think I've answered that. I didn't have
20 Dennis Montgomery do anything.

21 Q. Did you give Robert Frank a copy of the fake
22 target letters?

23 A. I didn't give anybody a copy of the target.

24 Q. How long had you been a friend of Robert Frank?

25 A. We'd known him on and off for a while. He was

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1 working on -- he'd done some articles on Yellowstone
2 Club working on his book. I can't remember what it's
3 called, but it came out in '07.

4 So, you know, we had had dinners with him. We
5 had spent time with him.

6 Q. And how many times had you used Robert Frank to
7 spread stories in the media against your opponents,
8 Ms. Blixseth?

9 A. I don't know how to answer a question like
10 that.

11 MR. HOLAHAN: The question assumes facts not in
12 evidence.

13 MR. FLYNN: We'll see, Mr. Holahan.

14 MR. HOLAHAN: Oh, yeah. We will see.

15 MR. FLYNN: We will, sir. Trust me, we will
16 see.

17 MR. HOLAHAN: Okay.

18 BY MR. FLYNN:

19 Q. Ms. Blixseth, is it your testimony under
20 oath -- strike that.

21 Did you have any discussion with Robert Frank
22 relative to the fake target letters?

23 A. I don't recall having any, but I could have.
24 It was John Wilke that was working with Dennis, so not
25 that I recall, no.

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1 Q. You don't specifically recall, but you may have
2 discussed the fake target letters with Robert Franks
3 [sic]; is that your testimony?

4 A. You keep saying "fake target letters." At the
5 time and to this day I don't know if they're fake, but
6 the letter I was shown that was a target letter.

7 Q. What letter were you shown, Ms. Blixseth?

8 A. It was a letter addressed to Tim saying --
9 informing him he was the target of investigation. It
10 came about the same time that I had gotten calls from an
11 investigation to the death of Denise Touhey and to the
12 investigation of IRS, both of which told I didn't
13 believe Tim had anything to do with it and I had no
14 information for them.

15 Q. When did you first speak to Sam Byrne about the
16 fake target letters?

17 A. I told him about them -- it was during the same
18 time that we all heard about the investigation on Denise
19 Touhey and the IRS. I don't recall the exact date. It
20 was within that same time frame.

21 Q. Yeah. Who is "them" in your last answer?

22 A. You'll have -- I don't --

23 Q. Did you have any conversations with any state
24 or federal agency when you first learned about the fake
25 target letters regarding any investigation of

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1 Mr. Blixseth?

2 MR. HOLAHAN: I'm going to start objecting to
3 every question that you ask using the phrase "fake
4 target letters." We don't know what you're talking
5 about. I don't know what you're talking about.

6 The deponent has said she doesn't know what
7 you're talking about, so we object to the phrase "fake
8 target letters" because we don't know that there are any
9 fake target letters and every time you ask that question
10 I'm going to be object to it.

11 If you know how to answer, if you want to read
12 back that question and you can figure out how to answer
13 it, you can.

14 THE WITNESS: Okay.

15 BY MR. FLYNN:

16 Q. With regard to the letter that you acknowledged
17 you were shown by Dennis Montgomery --

18 A. Uh-huh.

19 Q. -- that letter, referencing that letter, when
20 did you first speak to Sam Byrne about that letter?

21 A. I don't remember the date. I just said -- we
22 were talking about things and I said, "Just for your
23 knowledge" -- this came about the same time as the
24 Denise Touhey investigation was going on and the IRS
25 investigation and now I've got a copy of a letter.

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1 And I don't know -- I didn't do anything with
2 it. I didn't even keep it. I didn't know if there was
3 any truth to it. I said that when I said about -- when
4 I told him about the letter, but I said, "I don't
5 want -- if there's something of this, then I didn't say
6 anything. I want you to know."

7 Q. How did Dennis Montgomery come about to have
8 possession of this letter?

9 A. I don't know.

10 Q. Well, he was your employee. Did you ask him?

11 A. I asked him and he said it came across on a fax
12 machine.

13 Q. From where?

14 A. I didn't ask him that.

15 Q. Did it come across on a fax machine from Boston
16 with a Kinko's cover sheet?

17 A. That's what I was told when Tim got the
18 letters, but I wasn't aware of that. I didn't even look
19 at that.

20 Q. Did it come from Sam Byrne on a Kinko's cover
21 sheet in February of 2008 just before Mr. Byrne
22 terminated the sale of the Yellowstone Club?

23 A. How can I answer question about did it come
24 from Mr. Byrne when I just said I don't know where the
25 letter came from?

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1 Q. Did you talk to Steve Crisman about this
2 letter?

3 A. May have. Steve and Nick and everybody was
4 around then at the time of this.

5 Q. In the first week of March 2008 did you fly to
6 Cabo San Lucas with Mr. Crisman and Mr. Rhodes and did
7 you have possession of the letter and discuss it with
8 them?

9 A. I don't recall if I had possession, because I
10 ended up not keeping the letter. So there could have
11 been discussion about it.

12 Q. How do you know you didn't keep the letter?

13 A. Because I don't have it.

14 Q. Did you throw it away?

15 A. I think I gave it back to Dennis. I said,
16 "There's nothing I would do with any of this. There's
17 all kinds of all those things going on. I don't want
18 anything to do with it. I just want to try to get
19 things done the way we're getting done," and didn't do
20 any more with it.

21 Q. Did you discuss the letter with Deborah Klar
22 and give her a copy of it?

23 A. I did not. Whether it was discussed with her,
24 it could have been discussed within the Liner firm,
25 because when I found out Tim was being investigated by

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1 the IRS, I wanted to find out if that included me, and
2 Ellyn Garofalo -- I can't remember her last name, starts
3 with a G -- she investigated. She made some calls to
4 find out if I was also being investigated along with Tim
5 and the IRS.

6 Q. Did you give a copy this letter to the Lemond
7 parties or the Lemond lawyers?

8 A. Absolutely not.

9 Q. Did you discuss it with them?

10 A. Absolutely not.

11 Q. Did you discuss it with Conrad Burns or give
12 him a copy, the former senator from Montana?

13 A. No, I did not.

14 Q. Did you discuss it or give a copy to Mary Bono?

15 A. No, I did not.

16 Q. Did you discuss or give a copy to Robert
17 Bennett of the Skadden Arps firm?

18 A. No, I did not.

19 Q. Does the Skadden Arps firm currently represent
20 you?

21 A. They're not representing me for anything going
22 on, no. I haven't terminated them, but they're not
23 representing anything.

24 They were representing Dennis Montgomery and
25 Blxware in connection with things that you had been

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1 representing him for and they stepped into your shoes.

2 Q. How much did you pay Robert Bennett of the
3 Skadden Arps firm to represent you and Montgomery?

4 A. I don't recall. They're on my list of
5 schedules for bills still outstanding, but I don't
6 recall what the total was paid to them, what the
7 retainer was and what the total was paid.

8 Q. Did you pay them over \$300,000, Ms. Blixseth?

9 A. I don't recall.

10 Q. Was that paid on your behalf or on behalf of
11 Mr. Montgomery?

12 A. I think it was paid on behalf of the company
13 and Mr. Montgomery.

14 Q. At that time was the Skadden Arps firm
15 representing Credit Suisse?

16 A. I wasn't aware of them representing Credit
17 Suisse.

18 Q. Did Robert Bennett disclose to you that they
19 were representing Credit Suisse at that period of time?

20 A. No, he did not.

21 Q. At any time during this case has the Skadden
22 Arps firm asked you to sign a waiver of a conflict of
23 interest --

24 A. No, they have --

25 Q. -- between the representation of Credit Suisse

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1 and the representation of you?

2 A. No.

3 Q. Okay.

4 MR. HOLAHAN: Can we take a quick break?

5 MR. FLYNN: One more question.

6 Q. Do you recall executing three declarations in
7 the summer of '07 in an effort to stop the Yellowstone
8 Club sale to CrossHarbor Capital?

9 A. In an effort to stop the sale?

10 Q. Stop the sale.

11 A. No, I do not.

12 Q. Do you recall executing three declarations
13 relative to your motion to seek an injunction or
14 restraining order to stop the sale?

15 A. I didn't file a motion for that.

16 Q. What did you file a motion for?

17 A. You'll have to ask me -- there was so much
18 going on in family court and other things, you're going
19 to have to ask me specifically.

20 Q. Did you file three declarations in the summer
21 of '07 in connection with the Yellowstone Club sale to
22 CrossHarbor in which you claimed that the Yellowstone
23 Club was valued at \$1.3 million?

24 A. Was that in family court?

25 MR. HOLAHAN: What?

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1 MR. FLYNN: Based on?

2 MR. HOLAHAN: You mean 1.3 billion.

3 MR. FLYNN: 1.3 billion.

4 MR. HOLAHAN: You said million, did you mean
5 billion?

6 MR. FLYNN: Thank you. Thank you, Dennis.

7 MR. HOLAHAN: Glad to help.

8 MR. FLYNN: Always appreciate it.

9 Q. -- \$1.3 billion based on the total net value
10 appraisal methodology of Credit Suisse?

11 A. In what court are you referring to?

12 Q. Family court.

13 A. Family court. There's been so many things
14 filed. I don't recall my exact declaration then, but I
15 was under the impression at that time that the Credit
16 Suisse things were valid, so it could be.

17 Q. How long did you maintain the view that the
18 Credit Suisse things were valid on your personal
19 financial statements, Ms. Blixseth?

20 A. As long as that's what I was being told.

21 Q. Who told you that?

22 A. The reports from the audits from Credit Suisse
23 and the Yellowstone Club, things that Tim had given me
24 from the companies.

25 Q. When you were borrowing approximately

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1 \$40 million from various lenders, were you holding
2 yourself out to having a net worth of approximately 800-
3 to \$900 million based on the Credit Suisse total net
4 value appraisal system?

5 MR. HOLAHAN: Objection. Vague as to time
6 frame. Vague in general. If you want to be a little
7 bit more specific, maybe that would help.

8 BY MR. FLYNN:

9 Q. Can you answer the question?

10 A. No, I cannot.

11 MR. HOLAHAN: We need to take a quick break,
12 sorry.

13 MR. FLYNN: Go ahead.

14 (Recess taken.)

15 MR. FLYNN: Let me show you what has been
16 marked as Exhibits 8 and 9, Ms. Blixseth, and these
17 purport to be documents from the US Department of
18 Justice Criminal Division and the US Department of
19 Justice Environment and Natural Resources Division.

20 (Exhibits 8 and 9 were marked for identification.)

21 MR. FLYNN: Exhibit 8 is purportedly signed by
22 Ronald Sharpe, Assistant United States Attorney,
23 addressed to Mr. Timothy Blixseth, dated December 12,
24 2007. Let's start with that one.

25 MR. HOLAHAN: Are Exhibits 1 through 7 here

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1 today but you haven't used them yet or they're from the
2 previous deposition?

3 MR. FLYNN: Have not been used. They're in
4 that pile. Unfortunately, Kinko's didn't collate them
5 so you'll have to find them on your own.

6 Q. Do you recognize Exhibit 8, Ms. Blixseth?

7 A. I'm not sure. It seems familiar, but you guys
8 keep referring to two and I think I only saw one, so I
9 don't know if it's this one or the other one.

10 MR. HOLAHAN: What is this a pile of you put in
11 front of me, Mr. Flynn?

12 MR. FLYNN: It's a -- it's the exhibits we're
13 addressing now.

14 MR. HOLAHAN: Yeah, but it's not in any order.

15 MR. FLYNN: It's in order; it's not collated,
16 as I just said.

17 MR. HOARD: When you say collated, you mean the
18 individual documents are not stapled together?

19 MR. FLYNN: Correct.

20 MR. HOARD: You just have to thumb through it
21 until you get to -- you want to see what it looks like?
22 It's a letter.

23 MR. HOLAHAN: Okay.

24 MR. FLYNN: You have to thumb through it until
25 you find it.

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1 BY MR. FLYNN:

2 Q. That document, Ms. Blixseth, purportedly signed
3 by Ronald Sharpe --

4 MR. HOLAHAN: You'll have to wait a minute,
5 Mr. Flynn. I want to see the document before you ask
6 her any questions about it. So if you can tell me how
7 many pages in, is it after -- where is it in the pile?

8 MR. FLYNN: You want to hand me the pile and
9 I'll find it for you?

10 MR. HOLAHAN: Yeah. That's good.

11 MR. FLYNN: This is the first part of your
12 file.

13 MR. HOLAHAN: Okay.

14 MR. FLYNN: These are the two documents --

15 MR. HOLAHAN: Thank you.

16 MR. FLYNN: -- 8 and 9. That's the second part
17 of your file.

18 MR. HOLAHAN: Okay.

19 BY MR. FLYNN:

20 Q. Now Ms. Blixseth, how many conversations did
21 you have with Mr. Montgomery about either one of these
22 documents?

23 MR. GLASSER: Is the second one 9, Mr. --

24 MR. FLYNN: The second one is Exhibit 9.

25 THE WITNESS: Can I see both so I can tell you

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1 which one I know I saw for sure? I mean I don't know if
2 I'll be able to tell you for sure, but is this the same
3 one?

4 MR. HOLAHAN: Can you, please, explain what is
5 redacted and why on Exhibit 9, Mr. Flynn?

6 MR. FLYNN: No, I cannot.

7 MR. HOLAHAN: Who redacted it?

8 MR. FLYNN: We're going to find out whether it
9 was Blixseth or Montgomery.

10 MR. HOLAHAN: You did not?

11 MR. FLYNN: Oh, I absolutely have not.

12 MR. HOLAHAN: I'm talking about the redactions
13 here. You did not do these redactions?

14 MR. FLYNN: Don't cross-examine me, I just told
15 you I didn't do them.

16 MR. HOLAHAN: You put an exhibit in front of my
17 client, I'm entitled to ask you questions about it.

18 MR. FLYNN: Do whatever you want, we're moving
19 on.

20 Q. Ms. Blixseth, when did you first see either one
21 of these documents?

22 A. I think this is the one I saw, because I don't
23 remember seeing -- the one I saw had everything on
24 there.

25 Q. So you pointed to Exhibit 8?

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1 A. Correct.

2 Q. And you said that's the one you saw, which is a
3 document -- purportedly dated December 12, 2007, from a
4 Ronald Sharpe, Assistant United States Attorney; is that
5 correct?

6 A. That's correct.

7 Q. And the other one, as your counsel points out,
8 has some redactions on it.

9 Did you do those redactions?

10 A. No, I did not.

11 Q. Have you ever seen Exhibit 9, the one with the
12 redactions?

13 A. I don't think so.

14 Q. How many occasions have you had to discuss
15 either one of these documents with Dennis Montgomery?

16 A. On several occasions, because when you first
17 showed it to me I was surprised and then it kind of fell
18 into the other things that I had gotten calls about.

19 Q. Ms. Blixseth, I'm not interested in the other
20 things you got calls about. I'm interested in this
21 document. Please restrict your answers to this
22 document, ma'am.

23 A. I don't know how many times I talked to Robert.

24 Q. At this point in December of '07, your divorce
25 had not become final; is that correct, Ms. Blixseth?

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1 A. No. It didn't become final until October of
2 '08.

3 Q. And you were in a vigorously contested divorce
4 proceeding with Mr. Blixseth; is that fair to say?

5 A. It was on and off okay and not okay, yes.

6 Q. And sometime in late '07, according to your
7 testimony, you were given possession of a document that
8 indicated your ex-husband or then husband was the
9 subject of a grand jury investigation into possible
10 violations of federal criminal laws involving, but not
11 necessarily limited to 18 USC 1959, 1344 bank fraud and
12 201 bribery of public officials and witnesses?

13 A. Yeah.

14 Q. Is that your testimony?

15 A. Well, I'm not sure what you just asked me, but
16 I don't think I saw this in December. I think I saw it
17 in early '08, but I don't actually recall when I first
18 saw it.

19 Q. In fact, Ms. Blixseth, you began emailing about
20 this in late January, early February '08; isn't that
21 correct, ma'am?

22 A. I don't remember email -- I don't remember when
23 I started emailing about it, but I don't think I saw it
24 until early '08.

25 Q. Who did you email about this document in early

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1 '08 after Mr. Blixseth and Mr. Byrne signed the
2 agreement to purchase the Yellowstone Club?

3 A. I believe the purchase -- I believe the
4 document to purchase the Yellowstone Club was signed in
5 the springtime of '07, is what I was told in family
6 court, so I don't know how long after that.

7 But when I became aware of this, then I was
8 asking some questions about it just like I was some
9 other things that you don't want me to state.

10 Q. Ms. Blixseth, isn't it a fact that the letter
11 of intent to sell the Yellowstone Club for \$510 million
12 was signed on June 28th, '07, and the purchase and sale
13 was actually signed on January 15, '08; isn't that true?

14 A. I don't know the dates. I was frozen out at
15 that time and only given information through family
16 court.

17 Q. As of January 15, '08, were you frozen out?

18 A. Yeah. Some of the things that -- some of the
19 things that we were asking through family court started
20 to be answered in '08 and, in fact, Tim and I had some
21 conversations directly.

22 I don't remember when they were in '08 from
23 some information whether it was true or not that I was
24 given, so -- I don't recall the exact dates, though, but
25 it was in early '08, mid to early '08.

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1 Q. The written contract was mid '08 in which
2 Mr. Byrne agreed to purchase a bulk sale of the
3 Yellowstone Club assets; isn't that true?

4 A. I can't answer that question.

5 Q. Shortly thereafter Exhibit 8 surfaced with you
6 and Mr. Montgomery; isn't that correct, ma'am?

7 A. There was no correlation to me on that, so I
8 can't recall.

9 Q. How long after you saw Exhibit 8, according to
10 your previous testimony, did you call Sam Byrne and read
11 Exhibit 8 to him?

12 A. Actually, I don't think I read it to him. I
13 think that I paraphrased what it was about and it was
14 during the same time frame.

15 And you keep telling me only reference this,
16 but there was a time frame of certain things coming to
17 light that this -- I felt like if I had this information
18 and it was accurate and I didn't say when these other
19 things had come to light during the same time frame,
20 that I didn't want to feel responsible for having this
21 information and not talking about it.

22 And it was the same time frame as the
23 investigation on Tim on the death of Denise Touhey and
24 the IRS.

25 Q. Ms. Blixseth, when you first saw Exhibit 8, how

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1 much time elapsed between the time you saw it and the
2 time you called Robert Franks and read it to him, from
3 the Wall Street Journal?

4 A. I don't recall if I called Robert Frank and
5 read it to him.

6 Q. You may have, but you don't recall?

7 A. You ask me questions in such a way that -- that
8 I can't really answer them.

9 Q. When did you first give or read Exhibit 8 to
10 the media, Ms. Blixseth?

11 A. I've testified that I didn't give this letter
12 to the media.

13 Q. When did you first read it to someone in the
14 media?

15 A. I'm not aware that I did.

16 Q. You don't remember doing it?

17 A. I don't.

18 Q. When did you first email Mr. Franks about
19 Exhibit 8?

20 A. I don't -- I don't recall if I did or not.
21 That's something that -- I'm not sure if I did that
22 since he had put -- put Dennis Montgomery in touch with
23 John Wilke on -- on things.

24 I'm not sure if this was ever -- this was never
25 used by me for anything in reference to Tim Blixseth,

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1 other than it was given -- it was given to me.

2 Q. Now your testimony earlier was that you have
3 not been notified by any state or federal agency as to
4 whether you're a subject of a grand jury investigation;
5 is that correct?

6 A. That's correct.

7 Q. Do you know who -- have you spoken to any FBI
8 agents at any time relative to Mr. Blixseth.

9 A. Only when they've called me.

10 Q. When did they call you, Ms. Blixseth?

11 A. I've been emailed and called earlier this year.

12 Q. By who?

13 A. FBI agents.

14 Q. Who?

15 A. I don't recall the names. I don't recall the
16 names.

17 Q. Greg Rice?

18 A. I'm sorry?

19 Q. Greg Rice.

20 A. Greg Rice emailed me and he called me.

21 Q. About what?

22 A. Investigations that were ongoing about Tim.

23 Q. So your testimony -- what were those
24 investigations about about Tim when Mr. Rice called you?

25 MR. HOLAHAN: If she knows.

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1 BY MR. FLYNN:

2 Q. Well, whatever he said to you.

3 MR. HOLAHAN: If you know.

4 THE WITNESS: He first emailed me and said he
5 had some questions and could I call him. I emailed him
6 back saying, "What is this in reference to? This is a
7 scary thing to see and open up and says FBI."

8 When I did call him he said it was in reference
9 to some investigations going on about Tim and that --
10 that the FBI -- they weren't in his region and that the
11 FBI thought I could be some help.

12 Do you want me to keep going?

13 Q. Yes.

14 A. Well, you told me to limit it, so I'm trying
15 limit it to your question.

16 Q. No, don't limit it.

17 A. I said that I didn't think that I had any
18 information. I wasn't aware of anything that I had
19 information or that I thought Tim had ever done anything
20 criminally, so I didn't think I could be of help to
21 them.

22 He said he felt that I could be and stuff that
23 I may not have known about. And I said I was aware both
24 you and Tim had been calling them and he acknowledged
25 that you guys had been calling him on -- trying to say

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1 there was information that they should be investigating
2 on me and that there was no investigation going on on
3 me.

4 Q. He told you that?

5 A. Yes, he did.

6 Q. At that time did he have possession -- what is
7 your best memory of when earlier this year that took
8 place?

9 A. There was something going on within the --
10 either the Yellowstone Club or Yellowstone Club World
11 bankruptcy proceedings, because I was driving to Butte
12 and so I don't really recall but it would be sometime in
13 spring, I think, of this year.

14 Q. Now you mentioned that he said there were other
15 regions that were interested?

16 A. Correct.

17 Q. What other regions?

18 A. He didn't give me all the specifics. He told
19 me that there was one specifically out of Florida
20 regarding Turks and Caicos and that's the ones that they
21 wanted me to -- they were willing to fly in and meet
22 with me.

23 Q. Now prior to Mr. Rice calling you, when you
24 were still married to Mr. Blixseth and had community
25 obligations, did you make any effort in any way to

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1 initiate state or federal investigations against
2 Mr. Blixseth?

3 A. Absolutely not. I haven't subsequently.

4 Q. During the summer of 2007 did you or your
5 lawyer contact Mr. Lemond and assist the Lemond parties
6 in initiating state or federal investigations --

7 A. Absolutely not.

8 Q. -- against Mr. Blixseth?

9 A. Absolutely not.

10 Q. Now in connection with Exhibit 8 that your
11 employee you were paying a hundred thousand dollars a
12 month to, did you question him at the time he gave this
13 to you as to where he got it?

14 A. Yes, I did.

15 Q. What did he say?

16 A. He said it was on a fax machine, came in on a
17 fax machine.

18 Q. And a fax machine from where?

19 A. I didn't actually ask him from where. If
20 you'll notice -- that's why when you asked me on the
21 Kinko's -- there was nothing on top. I mean I had no
22 idea where this came from.

23 Q. Oh, you noticed at the time there was no fax
24 header on Exhibit 8?

25 A. He said, "It came on a fax machine," and when

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1 he said it came on a fax machine, I noticed there was
2 nothing on top where normally there would be numbers on
3 top of a fax machine.

4 Q. So then what did you say to him?

5 A. He said, "How did you get it on a fax machine?"
6 He just said, It came on a fax machine."

7 Q. Now at the time you knew that Mr. Montgomery --
8 the Trepp parties were claiming that he had fabricated
9 the Gibbons bribery emails.

10 A. I don't remember --

11 Q. Having that in mind --

12 A. Wait, you can't -- you made a statement.

13 MR. HOLAHAN: Let him.

14 BY MR. FLYNN:

15 Q. -- that your employee was being challenged as
16 having fabricated emails that were the subject of a
17 Washington, DC, grand jury, did you question
18 Mr. Montgomery whether he fabricated Exhibit 8?

19 MR. HOLAHAN: So the objection to that question
20 is that it assumes facts not in evidence and I'll let
21 her answer it if she can separate what is true and what
22 isn't in your question.

23 MR. FLYNN: We'll get into it in spades.

24 Q. Ms. Blixseth, you knew Mr. Montgomery
25 throughout 2007 and 2008 was being challenged in the

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1 eTreppid litigation on the basis that he had fabricated
2 two emails; isn't that correct?

3 A. I can't say 2007 to 2008. I don't remember
4 when that allegation was brought up. When that
5 allegation was brought up in the eTreppid I asked Dennis
6 if he fabricated them and he said no.

7 I don't recall asking him, I don't think I did,
8 because I don't think it even entered my mind that he
9 fabricated this.

10 Q. Now when the issue of his fabrication came up
11 between April and June 2007 when you hired Mr. Bennett,
12 when you hired Mr. Bennett and paid Mr. Bennett from
13 Skadden Arps, did you have a conversation with
14 Mr. Bennett about what evidence existed that
15 Mr. Montgomery had fabricated the two bribery emails?

16 A. I don't remember.

17 MR. HOLAHAN: Wait a minute. Can you read that
18 question back, please.

19 MR. FLYNN: I'll withdraw it.

20 Q. I want to know whether you talked to Bennett
21 about whether or not Montgomery fabricated the emails.

22 MR. HOLAHAN: If this question relates to
23 Mr. Bennett being retained by Ms. Blixseth on this
24 matter, I'm going to object to any questions about
25 communications between Ms. Blixseth and Mr. Bennett on

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1 attorney-client privilege.

2 BY MR. FLYNN:

3 Q. Was Bennett your lawyer?

4 A. Yes, he was.

5 Q. Did you, in fact, pay Bennett over a million
6 dollars in connection with the charges against
7 Mr. Montgomery?

8 A. You asked me earlier if I paid 300,000,
9 500,000; now you're asking me a million. I don't know
10 how much. I don't remember how much was paid. I don't
11 know how much the retainer was or how much was paid.

12 Q. Was paid for you or was it paid for Montgomery?

13 A. It was paid for the company to represent me as
14 the majority shareholder of the company and Dennis
15 Montgomery as the chief scientist.

16 Q. Now Ms. Blixseth, your testimony is that you
17 saw Exhibit 8 but you did not see Exhibit 9; is that
18 correct?

19 A. I don't recall ever seeing Exhibit 9.

20 Q. When you saw Exhibit 8 -- and I believe the
21 state of the record is the only person you recall
22 speaking to about it is Montgomery and Byrne; is that
23 your testimony under oath, Ms.?

24 A. Conrad Burn?

25 Q. No, Mr. Byrne, Sam Byrne.

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1 A. Sam. No, I don't think -- I don't think I
2 testified that they were the only people. I mean,
3 obviously, this got my attention and -- when I first saw
4 it and I was concerned.

5 So I may have talked to -- I mean I know that
6 Dennis was there when Crisman and Rhodes were there for
7 some Blxware meetings, but I don't really recall who
8 else I talked to about it. It concerned me, especially
9 in light of the other information.

10 Q. Did you call Mr. Blixseth?

11 A. I doubt I would have done that. We weren't
12 speaking at the time.

13 Q. Did you have your lawyer call Mr. Blixseth's
14 lawyer?

15 A. I don't -- I don't recall having that happen.

16 Q. As of a month ago did you tell Mr. Blixseth or
17 text him that you believed and you still believe that
18 the letters were accurate?

19 A. I had no reason not to believe they weren't.

20 Q. So when you spoke to Mr. Rice in May, June, of
21 this year from the FBI, did you tell him about these
22 letters, Ms. Blixseth?

23 A. I don't think so. I told -- when he first
24 started asking me questions I said, "If this has to do
25 with the Denise Touhey investigation or the IRS, I think

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1 I've already answered those questions, that I don't
2 think he had anything to do with it and I don't have any
3 information that he did, so I don't think there's any
4 information."

5 In fact, I don't think I talked about the
6 letters, but I did specifically say to him that I'm not
7 aware of -- I'm aware of a lot of things that I don't
8 like how he's done or how he's treated me, but I'm not
9 aware of any criminal wrongdoings on his behalf.

10 Q. The question, aside from all the verbiage,
11 Ms. Blixseth, is real simple.

12 A. Well, sometimes you want me to expand --

13 Q. Did you tell Rice that you had possession of a
14 grand jury target letter relating to your then
15 ex-husband?

16 A. I don't believe I said I had possession,
17 because I don't have it any longer and I don't think
18 that the target letter was brought up.

19 Q. When you were discussing the matter with Rice
20 as to whether Mr. Blixseth was under some type of a
21 federal criminal investigation, did you bring up or
22 discuss with him that, "Oh, is this related to a prior
23 investigation of Mr. Blixseth?"

24 A. No. I brought -- I asked if it was related to
25 things that I had heard about in the past and the only

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1 two specifics that I had heard -- that I expressed to
2 him that I heard about in the past were Denise Touhey
3 and the IRS. I did not bring up any other specifics.

4 Q. Just so we have this clear on the record,
5 Denise Touhey and the IRS, who went to the FBI and
6 complained Mr. Blixseth had murdered Ms. Touhey?

7 A. I have no idea. The only person that told me
8 who he thought had gone to it is Tim Blixseth and that
9 was just recently. And he told me that Greg Lemond
10 and -- I can't remember who else he said.

11 Oh, John Reveal had gone to them and that's the
12 first I heard of who had gone to them. I was surprised
13 to hear that. And that was just this year I heard that.

14 Q. So during the fall of '07, based on your prior
15 testimony, did you know that Reveal and Lemond had gone
16 to the FBI and accused Mr. Blixseth of committing
17 murder?

18 A. Absolutely not. I told you the first time I
19 heard about it was from Tim and I was surprised when he
20 told me that and expressed my surprise and said I had
21 been contacted about that and I had always said that I
22 didn't believe he had anything to do with it.

23 Q. So when Mr. Rice contacted you earlier this
24 year in May, June, did you talk to him about the alleged
25 murder -- strike that, Mr. Blixseth's alleged

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1 involvement in the murder of Denise Touhey?

2 MR. HOLAHAN: She's already answered that. She
3 can answer it again.

4 THE WITNESS: I said if this has to do with the
5 two investigations that I was aware of, that I didn't
6 believe -- I never believed he had anything to do with
7 it and I didn't have any information that would help
8 them if that's what they were investigating.

9 And he said that was not the investigations
10 that they wanted to talk to me about.

11 BY MR. FLYNN:

12 Q. I believe it's on the record already, but we'll
13 try to pin it down here. As I understand your testimony
14 you became aware of the IRS and Touhey investigations in
15 the fall of 2007; is that correct, ma'am?

16 A. I don't remember when it was.

17 Q. Was it in 2007, ma'am?

18 A. I believe so. I can't -- I kind of really
19 associate things with things that were going on in
20 family court and when --

21 Q. I don't care what you associate with. Was it
22 in the fall of 2007 as you --

23 A. Well, I'm trying to think out loud --

24 Q. -- as you previous testified?

25 A. -- so I can answer your question. If you want

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1 me to say I don't recall, I don't recall. I was trying
2 to recall.

3 MR. HOLAHAN: Mr. Flynn. Mr. Flynn, don't
4 interrupt my client until she's through answering your
5 questions.

6 MR. FLYNN: Thank you, Mr. Holahan. I'll ask
7 another question now?

8 MR. HOLAHAN: Okay.

9 BY MR. FLYNN:

10 Q. Ms. Blixseth, did you previously testify you
11 became aware of the Touhey and IRS investigations in the
12 fall of 2007? Just yes or no, ma'am.

13 A. If you're asking me the exact date, I don't
14 recall the exact date.

15 Q. No, I'm asking about the fall of 2007 based on
16 your prior testimony. Did you so testify?

17 A. I don't remember if I said a date. I just
18 remember that I was notified of them.

19 Q. Now with regard to the Denice Touhey
20 investigation, when did you first discuss with anyone
21 the fact that your ex-husband was being accused by
22 anyone -- Lemond, Reveal, anyone -- of having murdered
23 Denise Touhey?

24 A. The first time I ever heard even about an
25 investigation I didn't hear about it. I saw it in the

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1 paper. And I picked up the phone and called and said,
2 "What's this about?"

3 I thought it was horrible, thought it was
4 horrible for the memory of Denise, didn't believe it,
5 and didn't know if it was true.

6 I don't, thank God, believe everything is
7 written by the press and I didn't know if it was true
8 there was an investigation.

9 Q. Did you discuss that with Lemond or any of the
10 B shareholders?

11 A. I absolutely did not.

12 Q. That was during the due diligence period of
13 Mr. Byrne, the fall of 2007; is that correct?

14 A. When it came out in the paper?

15 Q. When what came out in the paper?

16 A. What you just asked me about, the investigation
17 of the death of Denise Touhey.

18 Q. When did it come out in the paper,
19 Ms. Blixseth?

20 A. Sometime in that period, I don't really recall,
21 but that was the first I'd heard of it. I hadn't been
22 approached by anyone until I saw it in the paper.

23 Q. When did you see it in the paper?

24 A. I don't recall the date.

25 Q. Roughly?

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1 A. Sometime in '07.

2 Q. That Mr. Blixseth was being associated with the
3 alleged murder of Denise Touhey -- I'm sorry --

4 A. No, that there was an investigation.

5 Q. Did you spawn that investigation?

6 A. I've answered that now about five times. I
7 absolutely had nothing to do with it. I didn't know who
8 did until Tim Blixseth told me just a few weeks ago and
9 he told me and it was Greg Lemond and John Reveal.

10 Q. We're going to get into what you do with the
11 media, Ms. Blixseth, believe me.

12 Did you report an alleged investigation of your
13 then husband to the media?

14 A. I absolutely did not.

15 Q. IRS investigation, in the fall of '07 what did
16 you know about the IRS investigation, Ms. Blixseth?

17 A. I just knew that there was one and it concerned
18 me because if there was an investigation by the IRS we
19 were still married and I wanted to find out if I was
20 also being investigated.

21 Q. How did you find out about it?

22 A. I don't recall.

23 Q. Who told you?

24 A. I don't recall.

25 Q. Was it Lemond?

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1 A. I'm sure it wasn't. I didn't speak to Lemond.

2 Q. Was it Lemond's lawyers?

3 A. I didn't speak to Lemond's lawyers.

4 Q. Was it Montgomery hacking into computers?

5 A. I'm not aware of Montgomery hacking into
6 computers.

7 Q. So as you sit here today you have no idea --
8 strike that.

9 Was there a grand jury investigation in
10 connection with the IRS investigation?

11 A. I believe -- when I heard that there was --
12 there was an investigation with the IRS, that's when I
13 talked to Ellyn at Liner and said I'd like to find out
14 if I'm under investigation as well.

15 Q. After those two investigations flopped, did you
16 and Montgomery manufacture Exhibits 8 and 9?

17 A. I had nothing to do with these two letters.

18 Q. When did you find out that the Touhey
19 investigation was basically shelved by the FBI?

20 A. I thought it was -- I didn't -- I didn't know
21 and I can't remember why I thought this, but I thought
22 that was something that was over with and when I talked
23 to Greg Rice earlier this year he said it was still an
24 open investigation, but that's not what they wanted to
25 talk to me about.

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1 Q. What did they want to talk to you about?

2 A. He said there was several other investigations
3 going on and the primary one that they wanted to talk
4 about first was people out of Florida.

5 Q. People out of Florida.

6 Were you and your ex-husband Matthew Crocker
7 drug dealers?

8 MR. HOLAHAN: Object to the question as
9 argumentative.

10 THE WITNESS: My ex-husband?

11 MR. FLYNN: Yes.

12 MR. HOLAHAN: Object to the question as
13 argumentative and beyond the scope of this --

14 MR. FLYNN: I'll withdraw.

15 Q. When you ran Choo-Choo Willy's --

16 MR. HOLAHAN: Are we assuming during this line
17 of questioning that Mr. Blixseth did not, in fact,
18 murderer Ms. Touhey? Is that the assumption behind all
19 these questions?

20 BY MR. FLYNN:

21 Q. Ms. Blixseth, when you and your husband were
22 running Choo-Choo Willy's, did you deal drugs?

23 A. Absolutely not.

24 Q. Now what did you understand the IRS
25 investigation to be about?

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1 A. I actually didn't know. I just knew that there
2 was something to do with -- I don't know. I just knew
3 that there was an investigation.

4 Q. Did --

5 A. She found out there was an investigation.

6 Q. Did it have to do with whether the Credit
7 Suisse loan was a dividend or a loan as alleged by the
8 Lemond parties?

9 A. My recall, it didn't have anything at all to do
10 with Credit Suisse. It had to do with our tax returns.

11 Q. In connection with whether or not the monies
12 received from Credit Suisse were a loan or dividend?

13 A. I didn't have any more information than what I
14 just said. I don't know.

15 Q. Do you know how the IRS concluded, as to
16 whether it was a loan or dividend?

17 A. I have no idea.

18 Q. As you sit here today, do you know when the IRS
19 concluded their investigation that it was, in fact, a
20 loan?

21 A. I do not.

22 Q. Are you in the habit of lying on financial
23 statements and loan documents to get money?

24 A. No, I'm not.

25 Q. Would you look at Exhibit 10, please.

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1 (Exhibit 10 was marked for identification.)

2 MR. FLYNN: That's it right there (indicating).

3 MR. HOLAHAN: Yeah.

4 BY MR. FLYNN:

5 Q. Now if you turn to --

6 MR. HOLAHAN: Hold it, Mr. Flynn.

7 BY MR. FLYNN:

8 Q. Turn to the 8th page down at the bottom,

9 Ms. Blixseth. Is that your signature, ma'am?

10 A. Hang on a second.

11 Q. Pages of Exhibit 10 are numbered.

12 A. Yeah, it looks like my signature.

13 Q. Okay. And did you sign that guarantee in order
14 to get \$13 million from Western Capital Partners?

15 A. I didn't get any money from Western Capital
16 Partners. It was a project my son was doing and he was
17 borrowing the money for the project.

18 Q. Yes. How much money, after the \$13 million was
19 paid, did your son give to you from the loan proceeds?

20 A. None.

21 Q. You recognize you're under oath, Ms. Blixseth?

22 A. Yes, I do, Mr. Flynn.

23 Q. Is it your testimony that your son never issued
24 any checks to you from any accounts he had control of
25 after June 15th of 2007; is that your testimony?

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1 A. In association with this loan?

2 Q. After the money went into the Story Mill's bank
3 accounts, was any money paid to you after June 15, 2007,
4 Ms. Blixseth?

5 A. From the proceeds of this loan?

6 Q. No, from bank accounts under control of your
7 son.

8 A. We had -- we had spec homes and we had other
9 things going on there, so there could have been monies
10 paid back to me from those kind of things, but I
11 received no money from this loan.

12 Q. I'm not talking about proceeds from the loan.
13 I'm talking about once the money from Western Capital
14 went into bank accounts controlled by your son, how much
15 over the ensuing three months did he pay you?

16 MR. HOLAHAN: She's already asked and answered
17 that question.

18 MR. FLYNN: No, she hasn't.

19 Q. How much money did you get three months after
20 this loan from your son, Matthew?

21 A. I'm not aware of getting any, but if I did it
22 would have been something not associated with this loan.
23 It would have been associated with spec houses that we
24 did at Yellowstone Club or other things. It had nothing
25 to do with this loan.

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1 Q. More than a million or less than a million,
2 Ms. Blixseth?

3 A. I'm not aware of getting any, but if I got some
4 it would have nothing to do with this loan.

5 Q. More than 2 million or less than 2 million?

6 A. I just said I'm not aware of getting anything
7 from this loan.

8 MR. HOLAHAN: That's fine.

9 BY MR. FLYNN:

10 Q. More than 3 million or less than 3 million?

11 MR. HOLAHAN: Mr. Flynn, she's not aware of
12 getting any money.

13 BY MR. FLYNN:

14 Q. Let's go to the first page of Exhibit 10.
15 No. 2 says, "None of the Borrowers nor Guarantors,"
16 that's you, Ms. Blixseth, "have ever filed for relief
17 under the US Bankruptcy Code"; is that a true statement?

18 A. No, Tim and I filed for bankruptcy in the early
19 '80s --

20 Q. First, I want an answer, yes or no. Is it a
21 true statement, Ms. Blixseth?

22 A. That would not be a true statement.

23 Q. So it was a falsehood in connection with a
24 document signed by you to induce payment of \$13 million;
25 is that correct?

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1 A. That line -- this whole thing -- I didn't read
2 the whole thing. I didn't have a lawyer on my behalf
3 read this whole thing.

4 Western Capital had asked Matthew if I would
5 consider guaranteeing the loan. Matthew called me.

6 Q. Ms. Blixseth, is that a false statement?

7 A. I already answered that question.

8 Q. What's the answer?

9 A. The answer is that is a false statement.

10 That wasn't your question by the way.

11 Q. You were the chief financial officer and,
12 according to your declarations, basically running
13 Yellowstone Club for how many years?

14 A. I wasn't running Yellowstone Club. There were
15 certain parts as chief operating officer of the
16 operations that I ran for several years.

17 Q. So as chief operating officer -- as of June 15,
18 2007, did you consider yourself to be a knowledgeable
19 and experienced businesswoman?

20 A. Yes.

21 Q. You had owned your own restaurants in the past;
22 is that correct?

23 A. Yes.

24 Q. And you had been the chief operating officer
25 for Yellowstone Club at that point in time for how many

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1 years?

2 A. I can't remember exactly when we switched to
3 the title of that, but I had been operating the
4 operations of Yellowstone Club for quite a while.

5 Q. You knew the significance of signing loan
6 documents with a bank relating to the procurement of
7 \$13 million, did you not?

8 A. I would say yes.

9 Q. And is it your testimony today that you didn't
10 read the documents, Ms. Blixseth?

11 A. I have to say that at the time it was my
12 consideration that it was Matthew's loan for the Story
13 Mill project; that they had had a long time to do
14 diligence. They had done an appraisal on it.

15 There was plenty of collateral to support the
16 \$13 million loan. They wanted additional just guarantee
17 for it and I agreed to do that. I didn't do what I
18 would normally do if it were my loan and I should have.

19 Q. We're going to get into your loans,
20 Ms. Blixseth.

21 A. I'm sure we will.

22 Q. Yes, we will.

23 But with regard to what you're calling
24 Matthew's loan, were you desperate for money June of
25 '07?

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1 A. I wasn't going to get any money out of this
2 loan.

3 Q. The question is: Were you desperate for money,
4 Ms. Blixseth?

5 A. During all of '07 because I received no
6 temporary or long-term spousal support and Tim Blixseth
7 continually testified in court that there was no
8 community cash flow, I was having to borrow to live and
9 support my companies.

10 Q. So you were desperate for money --

11 A. I'm not going to say I was desperate at this
12 time, but I was always looking to how I was going to
13 support myself during the time that I was frozen out of
14 everything.

15 Q. By borrowing money?

16 A. I borrowed money based on the fact that I was
17 getting assets I could pay the money back.

18 Q. In '07 who else did you borrow money from?

19 A. In '07?

20 Q. Strike that.

21 Prior to July '07 who else did you borrow money
22 from?

23 A. I had an ongoing line of credit with Palm
24 Desert National Bank. I had, I believe, before that
25 time a line of credit at American Bank.

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1 Q. How much were you in arrears? As of June 15,
2 '07, how much were you arrears in paying your creditors?

3 A. I don't know.

4 Q. How long had you been in arrears in paying your
5 creditors when you got this \$13 million for your son?

6 A. I don't know.

7 Q. Was it over a million dollars?

8 A. I don't know.

9 Q. Was it over \$2 million?

10 MR. HOLAHAN: She doesn't know, Counsel.

11 MR. FLYNN: Okay. We'll see, based on her
12 declarations, Mr. Holahan.

13 Q. Let's go to the next one. 3, "As of the date
14 hereof, none of the Borrowers nor Guarantors, one, are
15 currently insolvent on a balance sheet basis."

16 Was that true?

17 A. I believe that to be true.

18 Q. Two, "Currently able to pay their debts as they
19 come due"; is that true?

20 MR. HOLAHAN: Where are you reading from?

21 MR. FLYNN: No. 2 -- strike that.

22 No. 3 on Exhibit 10.

23 Q. Is that true?

24 A. I don't know the date this was signed and,
25 again, I told you I didn't read this, so I don't know.

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1 Q. Were you able to pay your debts as they came
2 due on June 15th of 2007?

3 A. I think I was intermittently able to based on
4 how I was making loans and how cash flow came in.

5 Q. Who referred you to Western Capital Partners to
6 get this loan?

7 A. I was never referred to it. It wasn't my loan.
8 It was Matthew's.

9 Q. How did you find out about the loan?

10 A. When Matthew called me and asked if I would be
11 willing to guarantee it.

12 Q. Did Jon Stack call you and speak to you about
13 this loan?

14 A. I don't recall.

15 Q. He may have?

16 A. Jon Stack would call about a lot of different
17 people and loans.

18 Q. Did you discuss with Jon Stack that you needed
19 the money and you were desperate for money?

20 A. No, I did not. The Western Capital loan -- I
21 had loaned Matthew money. The Western Capital loan
22 originally when they were going to do it was going to
23 pay me back, but the way it all turned out and the way
24 it was done there was no monies to pay back to me.

25 Q. So the plan was for you to be paid back money

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1 from this loan; is that correct, Ms. Blixseth?

2 A. Originally, but not by the time it went to
3 final paperwork.

4 Q. At the time the loan was entered into, did you
5 have discussions with anyone at Western Capital about
6 your divorce proceedings?

7 A. I think they asked me how it was going along.
8 They asked me about Yellowstone Club World. They were
9 concerned about that if I was guaranteeing this.

10 I met with them one time -- it was in Bozeman,
11 downtown Bozeman -- when they were there meeting with
12 Matthew.

13 Q. That was before the \$13 million check was paid?

14 A. Oh, yes.

15 Q. What did you say in that meeting in Bozeman?

16 A. I don't remember. There was a lot of people
17 there. It was at a restaurant. I don't recall.

18 Q. Did anyone ask you whether you were getting any
19 part of the loan proceeds?

20 A. I don't recall.

21 Q. Did anyone inquire from Western Capital what
22 accounts the monies were going into and what controls
23 were over those accounts?

24 A. I had nothing to do with the sources and uses
25 of the loan or any of those kind of discussions with

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1 that, so I was not there and privy to those kind of
2 meetings that I assume they had with this loan.

3 Q. Then why did your divorce proceedings come up?

4 A. I think that they asked me -- I think that they
5 asked me since I was going to agree to guarantee it if
6 it would have any impact on it and they were concerned
7 about the Yellowstone Club World, the new launching of
8 Yellowstone Club World.

9 Q. The next statement is four, "Borrowers and
10 Guarantors are not contemplating filing for relief under
11 the US Bankruptcy Code"; is that true?

12 A. That is true.

13 Q. So as of June '07 you weren't contemplating
14 filing for relief under the US Bankruptcy Code; is that
15 correct?

16 A. That's absolutely correct.

17 Q. Let's go down to No. 7, "Borrowers and
18 Guarantors have no judgments pending against them
19 jointly or severally"; was that true?

20 A. I believe so.

21 Q. No. 8, "Borrowers and Guarantors have no
22 delinquent tax obligations including, without
23 limitation, federal income tax, state income tax,
24 withholding tax, sales tax or personal property tax
25 obligations"; was that true?

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1 A. I believe that would be true.

2 Q. At the time did you and community owe state or
3 federal taxes, Ms. Blixseth?

4 A. I don't recall that we did.

5 Q. Nine, "Borrowers and Guarantors are not to
6 subject to restraining order of any type"; was that
7 true?

8 A. I believe that to be true.

9 Q. Ten, "Borrowers and Guarantors are not subject
10 to alimony or child support orders"; was that true?

11 A. To the best of my knowledge I didn't have any
12 child support or alimony obligations.

13 Q. Now Ms. Blixseth, is there any other document
14 that you have signed for anybody guaranteeing any loan?

15 MR. HOLAHAN: Ever? What time frame? Ever?

16 MR. FLYNN: Let's take it since the Credit
17 Suisse loan, September of 2005.

18 THE WITNESS: I don't recall except that maybe
19 it may be with American Bank in relationship to the
20 construction loan, I can't remember who that was with,
21 for the building of Lot 176, but I can't really recall.

22 BY MR. FLYNN:

23 Q. Before June of 2006 did you tell Nick Rhodes or
24 Steve Crisman that you were expecting over a million
25 dollars from a transaction you had in place in

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1 connection with financing Blxware or Opspring?

2 A. I never tried to finance Blxware or Opspring.

3 MR. GLASSER: Mr. Flynn, just because I'm late
4 to the case, who are those two guys, Western Capital
5 guys?

6 MR. FLYNN: They're a Denver lender.

7 THE WITNESS: Who's a Denver lender?

8 BY MR. FLYNN:

9 Q. Let me try it this way.

10 THE WITNESS: Wait a minute. That's not
11 correct.

12 Nick Rhodes and Steve Crisman, I think that's
13 who you're asking about?

14 MR. FLYNN: No, we said Western Capital.

15 THE WITNESS: No, he didn't, he said Nick
16 Rhodes --

17 MR. GLASSER: No. I wanted to know who those
18 two people were.

19 MR. FLYNN: Oh. They're two codirectors of
20 Blxware and Opspring.

21 MR. GLASSER: Thank you.

22 BY MR. FLYNN:

23 Q. Now did you have conversations with Crisman
24 prior to June of '07 about where you were getting money
25 to fund Opspring or Blxware?

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1 A. In general we may have had conversations based
2 on the fact that I wasn't getting supposal support and
3 things were dragging on in the courts of how I was going
4 to go about continuing to support the burn rate of
5 Blxware, but I don't have any specific recollection.

6 Q. Did you tell him you were borrowing money,
7 Crisman?

8 A. I think in general everyone knew in our little
9 group that's how I was surviving.

10 Q. During that time frame, June of '07, who else
11 were you borrowing money from to support your little
12 group?

13 A. June of '07. I think anybody else that I
14 mentioned was after June '07, but I could be mistaken
15 exactly on the dates.

16 Q. Prior to June '07, what were you telling
17 Crisman as to where you were getting funds to fund
18 Blxware and Opspring?

19 A. I don't recall.

20 Q. Did you tell him you were borrowing money?

21 A. I think I've answered that. In general
22 everyone knew that's how I was surviving at the time,
23 because Tim wasn't giving any cash flow to me from our
24 community cash flow, stating there was none and the way
25 I was surviving was to borrow money.

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1 Q. Did Mr. Blixseth object to giving
2 Mr. Montgomery, who is about to go to prison, a hundred
3 thousand dollars a month community funds?

4 A. He had nothing to do with that.

5 Q. No. Did he object?

6 A. I haven't had any conversation with him about
7 that.

8 Q. Back in the summer of '07 did Mr. Blixseth
9 object to putting any money in Opspring or Blxware
10 because it was a total con?

11 A. No. In fact, I have a note saying, "Give me
12 three days' notice when you need the next 5 million and
13 I'll make sure it gets done."

14 Q. What is the date of that note?

15 A. I'd have to go back and look.

16 Q. Was it in '06?

17 A. You might be right. That might have been in
18 '06.

19 Q. When you misrepresented what the technology was
20 to Mr. Blixseth?

21 A. Is that a question?

22 Q. Yeah. Did you misrepresent what the technology
23 was worth?

24 A. No, I did not. You did.

25 Q. We'll see.

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1 Let's go to the third page of Exhibit 10.

2 MR. HOLAHAN: Who did he represent?

3 THE WITNESS: Dennis Montgomery. He's the one
4 who told me there were no objections or anything.

5 BY MR. FLYNN:

6 Q. Ms. Blixseth, do you know what representations
7 and warrantees are in loan agreements?

8 A. I think I have a general knowledge.

9 Q. How many loan agreements have you signed?

10 A. I don't know.

11 Q. Over the years?

12 A. I don't know.

13 Q. Have you been borrowing money back since your
14 restaurant days 25 years ago?

15 A. We've been in business for a lot of years and
16 had -- Tim had a lot of different things that we've done
17 over the years that had loan agreements, yes.

18 Q. You know what reps and warrantees are in loans
19 agreements, don't you?

20 A. I just answered that, that I have a general
21 knowledge, yes.

22 Q. Let's go to No. 51, "All representations and
23 disclosures made by Borrowers and Guarantors including,
24 without limitation, Borrowers' and Guarantors' financial
25 condition and information concerning the property and

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1 improvements located thereon or any other collateral
2 pledged to secure the repayment of the loan collateral
3 are to the best of the Borrowers' and Guarantors'
4 knowledge accurate in all respects.

5 "Borrowers and Guarantors have not concealed or
6 withheld any material information concerning borrowers'
7 and guarantors' financial condition or the collateral."

8 Did you provide a financial statement to
9 Western Capital Partners?

10 A. I don't recall if I did at this time.

11 Q. Did you provide a cash-flow analysis to Western
12 Capital Partners?

13 A. I don't think I would have done that with
14 Western Capital, because, again, I didn't consider this
15 my loan.

16 Q. Then No. 55 reads, "This loan is for strictly
17 business purposes. No portion of the loan will be used
18 for consumer, family or household purposes. Borrowers
19 will not use any portion for personal, family or
20 household purposes. Instead the proceeds will be used
21 exclusively for Borrowers'" -- purposes -- "for
22 Borrowers' business."

23 Did you read that?

24 A. I'm telling you I don't recall if I read any of
25 this, but I would say that that was adhered to.

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1 Q. Did the Story Mill project make any money in
2 2007 and 2008?

3 A. I wasn't involved in the operation or the how
4 the Story Mill project was going.

5 Q. So if any funds were paid in 2007 or 2008 by
6 your son Matthew from Story Mill bank accounts, where
7 else would that money have come from other than this
8 loan, Ms. Blixseth?

9 A. I can't answer questions about Story Mill and
10 their cash flow.

11 Q. Did they have any cash flow?

12 A. I can't answer questions about that. I don't
13 know.

14 Q. What was Story Mill?

15 A. Story Mill was a project that Matthew had put
16 together to develop and it may have had some other
17 things in it besides just the land at Story Mill, but
18 I'm not aware of it.

19 Q. Let's go to 58, "Borrowers and Guarantors have
20 had an opportunity to consult with their own legal
21 counsel concerning the loan and each of the anticipated
22 loan documents."

23 Did you consult with legal counsel?

24 A. I did not.

25 Q. 61, "Borrowers and Guarantors understand that

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1 the lender is relying on these representations and that
2 it would not advance the contemplated loan," in italics,
3 "if any one of the representations were inaccurate or
4 misleading in any way."

5 A. I'm sorry, which one are you reading?

6 Q. 61.

7 You knew, Ms. Blixseth, when banks or lenders
8 loan money they rely on your statements in loan
9 applications.

10 You knew that at the time, did you not, Ms.?

11 A. They rely on the information you give them, of
12 course.

13 Q. At the time did you disclose to Western Capital
14 Partners that you were involved in any litigation?

15 A. Not that I recall.

16 MR. FLYNN: Okay. Put that aside. Let's go to
17 the loan agreement.

18 (Exhibit 11 was marked for identification.)

19 BY MR. FLYNN:

20 Q. In the interests of saving time, I believe
21 you've already testified when you were deposed by the
22 Western Capital folks that that signature on page 13 is
23 yours.

24 A. Yes.

25 Q. Let's go over to page 5. This is the

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1 representations and warrantees in the loan agreement and
2 it reads: "To induce Lender to execute this agreement
3 and perform the obligations of Lender hereunder" --

4 A. Can I stop you just a second? I didn't bring
5 my reading glasses in and this font is kind of blurry.
6 Do you have any?

7 MR. HOLAHAN: Reading glasses?

8 THE WITNESS: No?

9 BY MR. FLYNN:

10 Q. -- "hereby represents and warrants the Lender
11 as follows."

12 Your counsel can follow along and you can
13 listen to the question, Ms. Blixseth.

14 A. Can you tell me where you're reading from,
15 because I can kind of see it.

16 Q. Page 5, No. 6, and I'm going to B, "No
17 litigation."

18 A. Okay.

19 Q. "Except as disclosed in writing to Lender prior
20 to the date hereof, there is no pending litigation or
21 unsatisfied judgment entered of record against Borrower
22 or the property.

23 "No litigation or proceedings are pending or,
24 to Borrowers' knowledge, are threatened against Borrower
25 or any Guarantor which might affect the validity or

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1 priority of the lien of the deed of trust which might
2 affect the Borrower or any Guarantor to perform their
3 respective obligations."

4 MR. HOLAHAN: You're not reading correctly.
5 You're missing words.

6 BY MR. FLYNN:

7 Q. -- "to perform their respective obligations
8 pursuant to and as contemplated by the terms and
9 provisions of the agreement and the other loan
10 documents --

11 (Mr. Blixseth hands reading glasses to the
12 witness.)

13 THE WITNESS: Thank you.

14 BY MR. FLYNN:

15 Q. -- "or which could materially affect the
16 operations or financial condition of the property.

17 THE WITNESS: Better.

18 BY MR. FLYNN:

19 Q. -- "borrower or any guarantor."

20 Well, at the time, Ms. Blixseth, that wasn't
21 true, was it?

22 A. I wouldn't know at the time.

23 Q. June of '07 you were paying -- you were paying
24 millions of dollars for Montgomery in connection with
25 your claim that you owned the software --

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1 A. That wasn't my claim.

2 Q. -- that Montgomery allegedly possessed?

3 A. That wasn't my claim. That was eTreppid versus
4 Montgomery and Montgomery versus eTreppid.

5 Q. Montgomery was suing eTreppid. You knew that?

6 A. I was aware Montgomery was suing eTreppid.

7 Q. And you were paying for that?

8 A. Part of our agreement, you know that --

9 Q. Just yes or no, Ms. Blixseth. I don't need an
10 explanation.

11 Were you paying for it?

12 A. Can we get something clear? Sometimes you want
13 me to give an explanation and sometimes you don't.

14 Q. When I do, I'll ask for it.

15 Were you paying millions of dollars for the
16 defense of the technology in the Montgomery eTreppid
17 litigation?

18 A. You're aware of that. I was paying it to you.

19 Q. And on June 15 were you aware of it?

20 A. It was still ongoing, but that wasn't my
21 litigation.

22 Q. It wasn't.

23 Were you subsequently sued?

24 A. I think after this I was brought into it.

25 Q. We'll go there next, when you modified this

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1 agreement.

2 So you knew there was litigation pending that
3 did materially affect your financial situation, did you
4 not?

5 A. I will answer the same -- I will answer the
6 question that's worded in a different way, that at that
7 time that was not my litigation and that that was part
8 of the agreement within the contract with Dennis
9 Montgomery that I was paying your legal fees.

10 Q. Now you were paying the Liner legal fees as of
11 June '07, were you not?

12 A. I think that when you were -- when -- I can't
13 remember if Skadden came on before Liner or Liner came
14 on before Skadden to take some of the things off what
15 you were doing.

16 Q. Let's put some context to this. After
17 April 13th, 2007, at the Porcupine Creek meeting when
18 the judge had just released the FBI reports and you and
19 Mr. Kemp and myself and Mr. Montgomery met, I withdrew
20 from the litigation, did I not?

21 A. That's not when you withdrew, no. You withdrew
22 after.

23 Q. Shortly thereafter?

24 A. Because you tried to take over the company.

25 Q. Shortly thereafter I withdrew; correct, Ms.?

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1 A. You were so convinced the technology wasn't
2 good that you wanted the technology instead of having
3 your legal fees paid.

4 Q. Ms. Blixseth, when you signed this document did
5 you have any understanding as to whether or not the
6 pending Trepp litigation materially adversely affected
7 your financial situation?

8 A. Not when I signed this.

9 Q. When did you confess a \$26.5 million judgment
10 to Trepp?

11 A. The -- the agreement -- it's hard to answer
12 your question the way you worded it.

13 Q. When did you confess a \$26.5 million judgment
14 to Trepp?

15 A. I don't recall.

16 Q. Let's go --

17 MR. HOLAHAN: Do you have some, Madam Court
18 Reporter, paperclips?

19 Discussion off the record.

20 MR. FLYNN: Let's go to this document.

21 (Exhibit 14 was marked for identification.)

22 BY MR. FLYNN:

23 Q. Did you have your lawyer, Mr. Ryden, send the
24 letter dated May 24, 2007, to Hatch Jacobs in connection
25 with this loan?

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1 MR. GLASSER: What exhibit are you on? I'm
2 sorry.

3 BY MR. FLYNN:

4 Q. What exhibit number is that, Ms. Blixseth?

5 A. It's 14.

6 MR. HOLAHAN: 14.

7 MR. GLASSER: Thank you.

8 THE WITNESS: This looks like something that I
9 would have called -- that Western was requesting and I
10 would have called and asked Bill to do.

11 BY MR. FLYNN:

12 Q. Now is it your testimony, Ms., that you had
13 your divorce lawyers write Exhibit 14 when you were
14 desperately in need of money, you were binding yourself
15 to a \$13 million loan, but you weren't getting anything
16 out of it; is that your testimony?

17 A. That's such a compound question. I can't
18 answer that yes or no.

19 Q. When you had your divorce lawyers write this
20 letter with regard to your assets in excess of
21 \$500 million, did you know that at that point in time on
22 your financial statement you'd be now liable potentially
23 for a \$13 million obligation?

24 MR. HOLAHAN: I'm sorry, I don't understand
25 that question.

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1 If you understand it --

2 THE WITNESS: I don't.

3 BY MR. FLYNN:

4 Q. As a guarantor of the \$13 million loan, what
5 was your understanding as to whether or not some day you
6 might be obligated to pay the \$13 million?

7 A. My understanding was based on the collateral
8 that Matthew was putting up for the \$13 million, the
9 Story Mill project and the appraisal at the time and the
10 forecast of the final platting of this, that all the
11 worst-case scenarios would have to happen before I would
12 be obligated for this loan.

13 Q. Are you currently obligated for the loan?

14 A. I am.

15 Q. How much money, if any, did the Story Mill
16 project ever make?

17 A. I've answered that I was not involved with the
18 Story Mill project.

19 Q. So you guaranteed \$13 million and yet you had
20 no knowledge at the time that you guaranteed it --

21 A. That's not what I said.

22 Q. -- of whether the Story Mill project was even
23 viable; is that correct?

24 A. That's not what I just said. That's what you
25 just said. That's not what I said.

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1 Q. What knowledge did you have at the time of what
2 the Story Mill project was about?

3 A. I had knowledge that the collateral for this
4 loan was two spec houses at Yellowstone Club, including
5 their lots; that they were in second position behind
6 American Bank -- which was, I think, 10 or 12 million, I
7 don't remember -- on a project that they had appraisals
8 that supported this loan, and the forecast looked bright
9 for getting the final platting for it, which definitely
10 supported this loan.

11 So my opinion, not of the Story Mill project
12 per se, of the ongoing operations and cash flow and
13 income and expense was -- was not part of it. It was --
14 which is the actual collateral basis for a \$13 million
15 loan based on the collateral that Western Pacific was
16 taking.

17 Q. Then if that was the case and that was your
18 view at the time --

19 A. That was my view at the time.

20 Q. -- why did you ask your divorce lawyer to
21 certify what your assets were potentially worth?

22 A. I don't actually recall except that they --
23 they may have wanted to know. Like you said, they asked
24 about Yellowstone Club World and the divorce and how
25 that was going. There had been a lot in the paper.

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1 They may have asked to have somebody verify
2 that that's what they thought I was going to end up
3 with.

4 Q. Where is there anything in this document,
5 Exhibit 14, relative to Yellowstone Club World,
6 Ms. Blixseth?

7 A. I didn't say there was. I said that was a
8 question they asked me.

9 Q. So what exactly did they ask you? This was in
10 the Bozeman meeting?

11 A. Correct.

12 Q. What exactly did they ask you about Yellowstone
13 Club World?

14 A. If that was something that was going to
15 jeopardize the value of the Yellowstone Club, because --
16 I can't remember the gentleman's name at the time that
17 was there, questioned if that was going to take off or
18 not and it was a new concept and he questioned that, if
19 we were jeopardizing Yellowstone Club in any way for
20 that.

21 Q. Who is "he"?

22 A. I just said I can't remember his name. They
23 were all new people to me.

24 Q. How did they know about Yellowstone Club World?

25 A. There had been tons of press on it.

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1 Q. So when you had your lawyer send this document,
2 did you understand that they were checking into your
3 assets to determine whether or not the things you said
4 about your financial background was true?

5 A. I understood them to know that a lot of things
6 can happen in divorces and that they wanted to verify
7 that what -- and California being a community property
8 state and what they had seen and saw in Forbes and that
9 kind of stuff that I was going to get 50 percent of what
10 our supposed assets were.

11 Q. How long after the \$13 million was paid did it
12 fall into default?

13 A. I have no idea.

14 Q. When did Western Capital Partners start
15 contacting you with regard to the default on the loan
16 looking to you for money?

17 A. Well, I actually don't recall. I know that I
18 loaned money to make the interest payments sometime
19 after the loan was made, but I don't really recall the
20 dates.

21 Q. Let me see if I understand that testimony.
22 Sometime after the loan was made you began loaning
23 money. Who did you loan the money to?

24 A. Story Mill.

25 Q. To your son, Matthew --

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1 A. To the Story Mill project.

2 Q. -- to pay the interest payments.

3 Was that within the first month, Ms. Blixseth?

4 A. I don't remember. I don't believe so.

5 Q. The second?

6 A. No, I don't recall when it started.

7 Q. The third month?

8 MR. HOLAHAN: Counselor, she said she doesn't
9 recall.

10 BY MR. FLYNN:

11 Q. How much -- were you paying all of the interest
12 payments?

13 A. I don't recall.

14 Q. Was it an interest-only loan?

15 A. I believe so.

16 Q. How long after you started paying the interest
17 payments did you cease paying the interest payments?

18 A. I don't recall, but when I couldn't -- I
19 couldn't afford to pay them with my cash flow.

20 Q. Was it within six months?

21 A. I don't recall.

22 Q. So you took -- your son took \$13 million. So
23 we understand what happened here, you then began paying
24 the interest payments on it, then you no longer could
25 afford to pay them and the loan defaulted; is that your

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1 testimony?

2 A. I think that was your testimony, but --

3 Q. Is that yours?

4 A. No, but you -- if you ask me questions, I'll
5 try to give you testimony.

6 Q. Is that what happened? Can you answer that
7 question?

8 A. I don't believe that's the order in which
9 things happened.

10 Q. What is the order in which things happened?

11 A. Well, first of all, the 13 million wasn't just
12 13 million to work the Story Mill project or do other
13 things with. There was other things that had to be paid
14 off for the purchase of the contiguous hundred acres.

15 So most of that was -- and to finish the
16 project for getting the platting together and some of
17 those things and some of those expenses ran higher and
18 longer than they had anticipated.

19 Q. Did you start borrowing money from other
20 lenders when you, as guarantor, were in default on the
21 Western Capital loan?

22 A. I don't recall if that -- if there was other
23 lending done after that.

24 Q. Isn't it true that the Western Capital loan,
25 according to their lawsuit, was in default at least as

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1 of December '07? Do you know that?

2 A. I know that we were on the phone and I was
3 doing conference calls with them trying to work out how
4 we were going to be able to handle things, but I don't
5 remember the date.

6 Q. As of December '07 had you borrowed money from
7 First Bank & Trust?

8 A. Of December '07?

9 Q. Yes.

10 A. I believe that I did.

11 Q. Had you borrowed money from American Bank?

12 A. I believe that I had, yes.

13 Q. Did you tell First Bank & Trust or American
14 Bank that you were in default as a guarantor on the
15 Western Capital loan?

16 (Speakerphone emits loud static.)

17 BY MR. FLYNN:

18 Q. Did you tell American Bank or First Bank &
19 Trust when you borrowed those monies in late '07 that
20 you were in default as a guarantor on the Western
21 Capital loan?

22 A. I don't recall.

23 Q. Did you give them any, those banks, any
24 financial statements disclosing the Western Capital
25 loan?

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1 A. I don't recall if they were on them or not.

2 Q. Isn't it true, Ms. Blixseth, that you did not
3 notify either American Bank or First Bank & Trust that
4 you were in default of the Western Capital loan as a
5 guarantor when you began taking millions of dollars from
6 them? Isn't that true?

7 A. I just have to say I don't recall. I don't
8 recall the dates.

9 Q. Okay. Let's get into the loan. Do you
10 remember what the loan modification agreement was
11 with -- you may have it over there.

12 No, here it is.

13 We're a little bit out of order here. Let's
14 take that first.

15 (Exhibit 16 was marked for identification.)

16 BY MR. FLYNN:

17 Q. Do you remember entering into this loan
18 modification agreement a year later in June of --

19 MR. GLASSER: Is this Exhibit 16?

20 BY MR. FLYNN:

21 Q. -- '-08?

22 This is Exhibit 16, yes. Thank you.

23 THE WITNESS: Are yours marked?

24 MR. HOLAHAN: No, mine are not marked.

25 THE WITNESS: I think it's this one

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1 (indicating).

2 MR. HOLAHAN: Yeah, it is.

3 BY MR. FLYNN:

4 Q. In June of '08 do you remember entering into
5 this loan agreement?

6 A. Hang on just a second. My lawyer is still
7 trying to --

8 Okay. Now I'm ready.

9 Q. Do you remember entering into this document?

10 A. Barely. June of '08 was when there was a whole
11 lot of things going on, trying to settle with Tim and
12 Yellowstone Club things and stuff that were, I felt, my
13 things. This was, again, I still felt as Matthew's.

14 Q. Did you sign this document?

15 A. Sure I did, but why don't you tell me what
16 page.

17 Q. If you're sure you did, I believe you testified
18 in your prior deposition --

19 A. Yeah, I'm sure I did.

20 I did. It's on page 8.

21 Q. Let's go down to Release of Collateral under
22 this agreement in June '08. At the time you signed this
23 document had you just borrowed \$13 million from First
24 Bank & Trust and Wachovia?

25 A. No.

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1 Q. At the time you signed this document had you
2 borrowed \$8 million from Wachovia?

3 A. At the time?

4 Q. Yeah. Roughly at this time frame had you
5 borrowed \$8 million from Wachovia?

6 A. No.

7 Q. The answer is no?

8 A. No.

9 Q. Between March and June '08 did you borrow
10 \$8 million from Wachovia bank?

11 A. Not \$8 million, no.

12 Q. Okay. And did you execute a loan agreement in
13 both March and June '08 with Wachovia Bank first for
14 \$5 million, then for \$3 million?

15 A. There were two separate loans and the time
16 frame for the first one was not the time frame you just
17 said and I believe the 3 million was.

18 Q. Let's go down to the Release of Collateral. We
19 have all those documents. We'll get into them.

20 MR. HOLAHAN: Hold on one second here. I'm not
21 finding your signature here.

22 THE WITNESS: Yeah, I found it. It was on like
23 eight or something.

24 BY MR. FLYNN:

25 Q. Let's go down to the document -- first page,

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1 Ms. Blixseth.

2 MR. HOLAHAN: Hold on, Mr. Flynn.

3 THE WITNESS: No? Let me go back.

4 MR. HOLAHAN: These pages are out of order.

5 THE WITNESS: Yeah. The pages are out of
6 order, but I did find it.

7 MR. FLYNN: It's on page 8, Mr. Holahan.

8 MR. HOLAHAN: I don't have that. That's not in
9 my copy.

10 MR. FLYNN: I believe it is.

11 THE WITNESS: It is, they're just out of order.
12 It shows 8 and then it jumps to no page number, no page
13 number then it goes to 10 and it's behind it.

14 BY MR. FLYNN:

15 Q. Ms. Blixseth, let's go down to No. 1, Release
16 of Collateral.

17 A. What page?

18 Q. First page.

19 MR. HOLAHAN: I don't have it.

20 BY MR. FLYNN:

21 Q. "Lender hereby agrees to release the security
22 interest in Edra D. Blixseth's ownership interest in and
23 to Blxware, LLC."

24 Do you see that, Ms.?

25 A. Tell me where -- I'm sorry, no.

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1 Q. No. 1, Release of Collateral.

2 A. I gotcha.

3 Q. Why did you have them release the collateral
4 involving Blxware?

5 A. Oh, I remember this. This is when we first --
6 this is when we first discovered that, I believe almost
7 a year before, that there had been a blanket UCC filed
8 on everything that we were not aware of.

9 So when they -- so when we were getting ready
10 to do the -- when we were getting ready to do the
11 Wachovia loan, I believe, it was discovered -- and I
12 believe Liner was involved at the time, because Liner is
13 the one that brought Wachovia to me -- and they
14 discovered it and part of the condition on redoing this
15 was to have them release that.

16 Q. To release Blxware security?

17 A. Yeah.

18 Q. Let's go over to the second page. In paragraph
19 No. 2, the next to last sentence reads, "Also that
20 certain loan affidavit, dated June 15, 2007," that's the
21 one we went over, "which is part of the loan documents,
22 is hereby amended to include the additional collateral
23 and the Borrower and Guarantor hereby reconfirm and
24 remake all the representations and warranties made in
25 the affidavit and also make the same representations and

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1 warrantees with respect to the additional collateral."

2 So did you know, Ms. Blixseth, that you were
3 reaffirming all of those representations and warrantees
4 that we had previously read?

5 A. Yeah. You know, again, this is during a time
6 where we were trying to get things finalized between --

7 Q. The question is simple: Did you know?

8 A. The question is not as simple, maybe I'm
9 just --

10 Q. Yes or no?

11 A. It's not a yes-or-no question.

12 MR. HOLAHAN: Mr. Flynn, you can let her answer
13 the question and if you have a follow-up question, you
14 can ask it.

15 MR. FLYNN: I don't want dialogue, Mr. Holahan.

16 MR. HOLAHAN: You're going to get an objection.

17 MR. FLYNN: I'll withdraw the question. Next
18 question.

19 Q. At the time you signed these documents did you
20 read them?

21 A. I don't recall if I read them or I had Liner
22 read them for me.

23 Q. So you had your lawyer read them; is that
24 correct?

25 A. I don't recall if I read them, because I

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1 believe when I talked to -- when Wachovia brought to the
2 attention of Liner, who was handling the Wachovia loan
3 for me, that the UCC was filed by Western Capital I was
4 surprised. I had them look into it.

5 It was during the same time that this was being
6 renegotiated or reaffirmed or whatever and I -- I
7 believe that it was Liner that talked to them about -- I
8 think it was Jeff Adams, I can't remember -- about
9 releasing that.

10 Q. Ms. Blixseth, when you signed this document,
11 you had advice of counsel from Liner; is that your
12 testimony?

13 A. No. My testimony is that I don't remember if
14 they actually read this. I remember that they were
15 involved, because they were involved with Wachovia and
16 they were involved with when we found out about the UCC
17 and that we needed to have that removed on Blxware.

18 Q. At the time you signed this document was the
19 Liner law firm representing you in the existing
20 litigation in which you were a defendant?

21 MR. HOLAHAN: What litigation?

22 THE WITNESS: What litigation?

23 MR. FLYNN: ETreppid and Montgomery.

24 THE WITNESS: What was the date?

25 ///

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1 BY MR. FLYNN:

2 Q. June '08.

3 A. I think I was already brought into that at that
4 time.

5 Q. Did you disclose to Western Capital Partners in
6 June '08 when they rewrote this loan that you were a
7 defendant in the Montgomery litigation?

8 A. I had no communication with Western when this
9 was being done.

10 Q. That was strictly done by Liner; is that your
11 testimony?

12 A. It was strictly done by people telling me what
13 was going on and me saying, "Check it out," and -- yeah.

14 Q. And Liner --

15 A. I was in the middle of things I thought were
16 more important and that was getting the balance of --

17 Q. Ms. Blixseth, please listen to the question. I
18 do not want all of this verbiage.

19 A. Okay.

20 Q. The question is at the time were you
21 represented by Liner in June '08 in the eTreppid
22 Montgomery litigation?

23 A. And my answer was I believe I was already added
24 to the litigation at the time.

25 Q. The question is were you represented by Liner?

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1 A. If I was added to the litigation at this time,
2 it would be Liner I was represented by.

3 Q. Now Liner knew you were involved as a defendant
4 in litigation; isn't that true?

5 A. If they were my lawyers, I hope so.

6 Q. And Liner knew that the litigation involved
7 Blxware and the software technology that had been
8 pledged to Western Capital; isn't that true?

9 A. The Western Capital pledge was a blanket UCC.
10 It wasn't specifically pledged to them.

11 Q. Ms. Blixseth, please listen to the question.

12 A. I did and I answered.

13 Q. Did Liner know that the Blxware technology was
14 involved in the litigation in which you were a
15 defendant? Did they know that, Ms.?

16 A. I can't speak for Liner. Liner was
17 representing me.

18 Q. You were the client?

19 A. I was the client.

20 Q. And it's your testimony you don't know whether
21 or not they were defending you and your technology?

22 A. My answer is I'm not going to speak for Liner.

23 MR. FLYNN: Now get into Exhibit 15.

24 (Exhibit 15 was marked for identification.)

25 ///

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1 BY MR. FLYNN:

2 Q. Go to the last page, the next to last page, the
3 Declaration of Edra Blixseth.

4 A. Before I go to the last page, can I read what
5 this is?

6 Q. All I'm interested in is the next to last page,
7 your declaration.

8 A. I'd like to know what the declaration is for.
9 If you give me 30 seconds, I can look at the front and
10 tell what it's for before I go to the page.

11 Okay.

12 Q. Now this declaration is dated July 27, '07,
13 roughly a month after you got the 13 million -- or Story
14 Mill got the \$13 million from Western Capital Partners
15 and you guaranteed you were able to pay your bills as
16 they matured.

17 Paragraph 3 reads, "As a result I am presently
18 in arrears to creditors in the approximate amount of
19 \$2 million. Even after using all of the proceeds from
20 the sale of my real estate parcel, these debts are
21 primarily due to the ordinary expenses of Porcupine
22 Creek and they are increasing by hundreds of thousands
23 of dollars per month."

24 As of July 27 when you signed this,
25 Ms. Blixseth, how long had you been in arrears with

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1 creditors?

2 A. I don't recall.

3 Q. Were you in arrears with creditors as of
4 June 15, '07, when your son got the \$13 million from
5 Western Capital?

6 A. I don't recall.

7 Q. When your son got the \$13 million from Western
8 Capital, did you have any conversations with him about
9 how much of the loan proceeds you would get?

10 MR. HOLAHAN: Asked and answered. She's
11 already testified she didn't get any of the loan
12 proceeds.

13 MR. FLYNN: Are you instructing her?

14 MR. HOLAHAN: No, she can answer. I'm just
15 objecting.

16 BY MR. FLYNN:

17 Q. Did you have any conversations with your son,
18 Matthew, during June, July '07, about getting money from
19 Story Mill or from him?

20 A. I knew with how the loan was going to now come
21 about from Western to Story Mill that what was
22 originally anticipated that I'd get paid back some of
23 money I'd been loaning for Story Mill was not going to
24 be able to happen and I would not get any money from it.

25 Q. When you wrote this declaration were you

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1 cognizant and signed it under oath, were you cognizant
2 of the fact you had just represented as a guarantor to
3 Western Capital Partners that you could pay your bills
4 as they matured?

5 A. I've answered that. I've said I don't recall
6 exactly where I was at the time this was signed.

7 Q. Let's move on. We've got a lot of ground to
8 cover.

9 Put these over there, Tim.

10 (Exhibit 17 was marked for identification.)

11 BY MR. FLYNN:

12 Q. Do you know what a preliminary injunction is,
13 Ms. Blixseth?

14 A. I do now.

15 MR. HOARD: Which exhibit?

16 MR. FLYNN: That's Exhibit -- what, 17?

17 THE WITNESS: Uh-huh.

18 MR. HOLAHAN: How many pages?

19 THE WITNESS: Five, I think.

20 BY MR. FLYNN:

21 Q. Were you advised there was a preliminary
22 injunction in effect as of February 8, 2006, in
23 connection with the technology that you were paying a
24 hundred thousand dollars a month to Dennis Montgomery
25 for?

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1 MR. GLASSER: Are you on an exhibit, Mr. Flynn?

2 MR. FLYNN: It's 17. It starts Order in the
3 Second Judicial District.

4 MR. GLASSER: Okay.

5 THE WITNESS: Are you asking me what date was I
6 aware of this?

7 BY MR. FLYNN:

8 Q. Let's start there. What date were you aware of
9 this preliminary injunction?

10 A. I don't recall, but I remember when I met with
11 you and Dennis before I -- when Michael Sandoval --
12 Michael Sandoval brought you guys to me, I remember
13 asking if the eTreppid litigation was going to stop us
14 from being able to move forward on commercial viability
15 of the technology.

16 Q. So are you saying that you were aware of the
17 preliminary injunction as of that date?

18 A. No. I was aware there was none. I was told
19 there was none.

20 Q. When were you first given notice of the
21 preliminary injunction, Ms. Blixseth?

22 A. Probably about a year later. I found out
23 that -- actually, maybe sooner than that, but we got
24 things moving and started getting things together.

25 I was also told at the time that there was

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1 going to be a contract that -- coming along with Dennis.
2 In fact, you're the one that explained the contract and
3 how -Treppid screwed it up and that was going to be able
4 to come along with Dennis at the time of the agreement.

5 MR. FLYNN: Move to strike.

6 Who first --

7 MR. HOLAHAN: Are you striking your move to
8 strike or are you moving to strike?

9 MR. FLYNN: Who first informed you --

10 MR. HOLAHAN: Wait a minute.

11 MR. FLYNN: Mr. Holahan, I'm withdrawing all
12 those questions.

13 Q. Who first informed you of this preliminary
14 injunction?

15 A. I'm confused. What questions are you
16 withdrawing?

17 Q. Who first informed you of the preliminary
18 injunction?

19 A. I don't recall who first informed me. I recall
20 being surprised by it, since I was told there wasn't one
21 by Montgomery's counsel which was you.

22 Q. Were you aware when you signed the June '07
23 Western Capital loan that there was a preliminary
24 injunction in place?

25 A. '07?

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1 Q. '07.

2 A. Probably.

3 Q. A year and a half later, Ms. Blixseth.

4 A. I think I was by then.

5 Q. You were aware there was a preliminary
6 injunction in place?

7 A. I was aware of that.

8 Q. Okay. Let's move on.

9 At some point in time did you come to
10 understand that that preliminary injunction involved all
11 of Montgomery's purported technology?

12 A. I discovered that all of what was under the
13 lawsuit with eTreppid.

14 MR. FLYNN: Thank you.

15 And here's an order dated August 2, '07.

16 (Exhibit 18 was marked for identification.)

17 MR. GLASSER: What exhibit are we on, do you
18 know?

19 MR. FLYNN: Exhibit 18.

20 MR. GLASSER: And at the end of this depo are
21 you going to give the court reporter these?

22 MR. FLYNN: Yeah, she will take possession.

23 Q. Here's an order dated August 2, '07, by Judge
24 Pro affirming the preliminary injunction when you were
25 represented by the Liner firm.

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1 Did you know as of August 2, '07, that there
2 was a preliminary injunction in effect on Montgomery's
3 technology?

4 A. Clearly I did.

5 Q. And so as of June '07, did the Liner firm --
6 between June and August 2, '07, did the Liner firm
7 inform Western Capital Partners that there was, in fact,
8 a preliminary injunction on the Blxware technology
9 collateralized to them?

10 A. I can't speak for the Liner firm.

11 Q. And a year later in June '08 when you modified
12 the loan, did anyone notify Western Capital Partners
13 that there was a preliminary injunction in effect.

14 A. I'm not aware of it.

15 Q. Did you borrow any more money from any other
16 lending institutions?

17 That's all for now.

18 Did you borrow any more money from any other
19 lending institutions in which the Blxware collateral was
20 collateralize while subject to the injunction?

21 A. Well, the way you worded that, I didn't put
22 Blxware up for Western Capital. They filed a UCC.

23 Q. No, any other lenders. Please listen to the
24 question.

25 A. I'm trying very hard.

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1 Q. Did you borrow any money from any other lender
2 to which you pledged Blxware as collateral?

3 A. But you're saying any other as if I'd already
4 pledged to others. That's the reason I'm having a hard
5 time answering your question.

6 Q. Did you pledge Blxware to any lender, period,
7 during the period of the preliminary injunction?

8 A. I pledged to the second Wachovia, which is what
9 we were referring to on the 3 million and the 5-.

10 Q. So you got 8 million more on the Blxware
11 technology while there was a preliminary injunction; is
12 that correct?

13 A. I got \$3 million.

14 MR. FLYNN: We'll get into that.

15 Let's deal with Exhibit 19, one of the FBI
16 reports indicating the technology was fraudulent.

17 (Exhibit 19 was marked for identification.)

18 BY MR. FLYNN:

19 Q. Have you seen that FBI report, Ms. Blixseth?

20 A. I'm confused with this, because when this --
21 when you're talking about this is after the --

22 Q. The question is simple: Have you seen --

23 A. The question is not simple.

24 Q. -- Exhibit 18?

25 A. The question is not simple, because this report

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1 was part of --

2 MR. HOLAHAN: 19 or 18?

3 THE WITNESS: 19.

4 MR. FLYNN: 19, I'm sorry.

5 THE WITNESS: That this report was part of
6 something after an illegal raid by the FBI on Montgomery
7 on which you represented him and this was part of the
8 report to try to say that the technology was worthless
9 anyway.

10 BY MR. FLYNN:

11 Q. Does that mean you've seen it?

12 A. I don't know if I've seen this exact one. I
13 just know this was part of what was in court.

14 Q. When did you first learn that the FBI was
15 saying in written reports that the technology was
16 fraudulent?

17 A. I believe I learned it from you stating that
18 that's what you guys were going to use in defense of
19 Dennis's rights as illegal FBI raid.

20 MR. FLYNN: Thank you, Ms. Blixseth.

21 Here's another FBI report, Exhibit 20, also
22 indicating that the technology was fraudulent, and these
23 date back to early '06. They were released on April 9,
24 2006, by Judge Pro.

25 (Exhibit 20 was marked for identification.)

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1 BY MR. FLYNN:

2 Q. When did you get this part of the FBI report,
3 Ms. Blixseth?

4 A. I really don't know. I don't know if I ever
5 did.

6 Q. Was it on April 12th or 13th, 2009 -- strike
7 that, 2007, at Porcupine Creek?

8 A. I don't recall. I recall you going over the
9 case and things that they had filed in court that were
10 going to substantiate the information that was given to
11 them to get the FBI search warrant wasn't credible and I
12 recall that, but I don't recall seeing documents.

13 Q. Were the FBI reports given to you and Mr. Kemp
14 in April of 2007, Ms. Blixseth?

15 A. I don't recall.

16 Q. Did the Liner firm give you the FBI reports
17 that have been marked Exhibit 19 and 20?

18 A. Not to the best of my knowledge.

19 Q. Okay. Let's go to the declaration of FBI agent
20 Mike West.

21 A. 21.

22 (Exhibit 21 was marked for identification.)

23 MR. FLYNN: This will be Exhibit 21.

24 Q. Ask you just simply yes or no, have you seen
25 this document?

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1 A. I think I have seen this one.

2 Q. And when did you see it?

3 A. I think was given to me when during discussions
4 of how you were going to handle the alleged legal raid
5 and make it an illegal raid of Dennis Montgomery's --

6 Q. And now in July --

7 MR. HOLAHAN: Were you through with that
8 answer?

9 THE WITNESS: Just a run-on.

10 BY MR. FLYNN:

11 Q. In July of '06 did you visit Vice President
12 Cheney's office trying to sell the technology to
13 Mr. Cheney knowing there was a preliminary injunction in
14 place?

15 A. With your whole question in place just the way
16 it was, no.

17 Q. Did you visit Vice President Cheney's office?

18 A. Yes.

19 Q. Did you try to sell the technology to him?

20 A. No.

21 Q. What did you do?

22 A. We talked about the obstacles we were running
23 into of what we thought was technology that the DOD was
24 going to want to be using.

25 Q. And what were the obstacles?

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1 MR. HOLAHAN: Are you -- are you free to
2 testify about this?

3 THE WITNESS: That part I can. That part's
4 common knowledge.

5 MR. HOLAHAN: Uh-huh.

6 BY MR. FLYNN:

7 Q. Ms. Blixseth, what were the obstacles?

8 A. Of some within the people that had worked with
9 Warren Trepp were saying that the technology was not
10 valid and the people that had been using the technology
11 for tests and other things were saying it was valid.

12 Q. Now in this -- on page 2 it reads, "Special
13 Agent Gunderson further related that Dennis L.
14 Montgomery was the Azimyth employee --

15 MR. HOLAHAN: What line, Counsel?

16 MR. FLYNN: Page 2, lines 19 to 21.

17 Q. -- "who located the information. Special Agent
18 Gunderson advised me in a subsequent conversation that
19 Mr. Montgomery had reported that he located increased
20 noise in recent Al-Jazeera video transmissions."

21 Did you represent or Sandoval represent to
22 anyone in Cheney's office that Montgomery had decoded
23 al-Qaida communications on Al-Jazeera transmissions?

24 A. We showed them -- we showed them what we had
25 been -- the data that we had been processing.

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1 Q. Did that purport to show that Montgomery was
2 intercepting al-Qaida communications on Al-Jazeera
3 transmissions?

4 A. That I can't answer.

5 Q. Ms. Blixseth, isn't it a fact that you have
6 told numerous people that there was a \$100 million black
7 budget allocated from Montgomery's noise filtering
8 technology to filter out al-Qaida communications on
9 Al-Jazeera transmissions?

10 You've told that to numerous people, have you
11 not?

12 A. No. The first time I ever heard there was a
13 hundred million dollar contract came out of your mouth
14 that that's what Dennis Montgomery was bringing to the
15 new company that Warren Trepp screwed up.

16 Q. When was that?

17 A. That was when you were at my house with
18 Sandoval and Dennis the very first time I met you.

19 MR. HOLAHAN: Now we're going to have to take
20 your deposition, you realize.

21 BY MR. FLYNN:

22 Q. That would be in March of '06, Ms. Blixseth?

23 A. You have a better memory of months and dates,
24 but I know it was in '06.

25 Q. So when you went to see Cheney was it an effort

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1 to try to get the hundred million dollar contract?

2 A. It was an effort to try to see what the
3 blockage was in order to see how we could go about
4 talking to them about the technology we had.

5 Q. To sell it to them?

6 A. No, to talk to them about it.

7 Q. Did you want to get the hundred million
8 dollars, Ms. Blixseth?

9 A. If the technology was something that they
10 wanted to use and it was something we could do. I
11 wasn't trying to invest the money or have the burn rate
12 it was to not try to get money back out of it.

13 Q. Were you paying a hundred thousand dollars a
14 month to Montgomery in order to try to get the hundred-
15 million-dollar contract, Ms. Blixseth?

16 A. I was paying a hundred thousand dollars a month
17 for him to be the chief scientist for Blxware and
18 Opspring.

19 Q. Were you paying him a hundred thousand dollars
20 a month, yes or no, to get the hundred-million-dollar
21 contract?

22 MR. HOLAHAN: Asked and answered.

23 THE WITNESS: It's not a yes-or-no question.

24 MR. HOLAHAN: She answered that question.

25 ///

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1 BY MR. FLYNN:

2 Q. Now Cheney rejected you; is that correct?

3 A. That is not correct.

4 Q. What did Cheney's office say?

5 A. They were going to investigate and check into
6 what the roadblocks were.

7 Q. And what then happened?

8 A. They did some investigations and found that
9 they were getting discrep- -- different discrepancies in
10 the reports and we ultimately did not put a contract
11 together through the Cheney office.

12 Q. And then you went to Robert Franks at the Wall
13 Street Journal?

14 A. No, that's not correct.

15 Q. We'll look at your emails.

16 A. Okay.

17 Q. Now Ms. Montgomery --

18 A. I'm Ms. Blixseth.

19 Q. Ms. Blixseth, I get confused.

20 Did you testify a minute ago that you only got
21 \$3 million from Wachovia for pledging the Blxware
22 security?

23 A. I testified that the additional amount that I
24 got -- I already had a \$5 million loan and the
25 additional amount I got was 3-.

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1 Q. Did you pledge the Blxware security to first
2 get \$5 million before you got the \$3 million?

3 A. I didn't -- I don't believe so but --

4 Q. What exhibit do you have there in front of you,
5 Ms. Blixseth?

6 A. 22.

7 Q. 22.

8 (Exhibit 22 was marked for identification.)

9 BY MR. FLYNN:

10 Q. Let me ask you a couple of questions: As of
11 March 6, 2006, when you got this \$5 million demand loan,
12 were you in default with Western Capital Partners?

13 A. Tell me the date again.

14 Q. The date on the document, March 6, 2008, were
15 you in default with Western Capital Partners?

16 A. We may have been in technical default, but we
17 were working with them on trying to get things -- at
18 that time they were wanting to be cooperative and trying
19 to get things, so we got things together and Matthew was
20 work closely with Western.

21 So I can't answer if we were -- if they had
22 filed a default or if we were in technical default.

23 Q. Were you paying them?

24 A. Intermittently the interest was being paid.

25 Q. As of March 6, 2008, when was the last time you

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1 had paid Western Capital Partners?

2 A. I can't recall.

3 Q. As of March 6, 2008, were you in default with
4 American Bank?

5 A. I believe so.

6 Q. As of March 6, 2008, were you in default with
7 First Bank & Trust?

8 A. I don't recall.

9 Q. When you got the \$5 million on or about
10 March 6, did you disclose to Wachovia Bank that you were
11 in default or technical default with either First Bank &
12 Trust, American Bank or Western Capital Partners?

13 A. I don't recall, but the use of the funds from
14 Wachovia, they knew were to get some things --

15 Q. Please, the answer is I don't recall? Is that
16 your testimony? You don't know whether you were in
17 default when you took \$5 million from Wachovia Bank?

18 MR. HOLAHAN: Counsel, if you don't let her
19 finish answering your questions, we're going to stop the
20 deposition, very simply.

21 MR. FLYNN: Counselor, I'm not interested in
22 all the add-ons. The simple question: Do you know
23 whether you were in default as of August 2006? It's yes
24 or no. You either know or you don't know.

25 MR. HOLAHAN: If you don't let her answer the

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1 questions you ask, we're going to stop.

2 MR. FLYNN: Yeah. You do whatever you're going
3 to do and I'll do what I'm going to do.

4 MR. HOLAHAN: Okay.

5 Q. Ms. Blixseth, as of March 6, 2008, were you in
6 constant email communication with Leon Royer from
7 American Bank with regard to trying to cure the default
8 that had been going on for months with American Bank?

9 A. I can't tell you the exact dates. There were
10 things that -- I can't tell you the exact dates.

11 Q. Now as of this time, early March '08, is that
12 roughly the same period of time that you first found the
13 fake target letters?

14 A. I'm not aware of target letters being fake or
15 not fake. I told you when I think I first got them.

16 MR. HOLAHAN: That's all right.

17 BY MR. FLYNN:

18 Q. Now as of early March '08, were you
19 communicating with Sam Byrne about trying to make a
20 separate deal on the Yellowstone Club?

21 A. Absolutely not.

22 Q. As of March 21, '08, did you send Gary Peters
23 to Sam Byrne's office to make a separate deal on the
24 Yellowstone Club?

25 A. That was not why Gary Peters went to Sam

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1 Byrne's office.

2 Q. Do you have numerous email communications with
3 respect to why Gary Peters went to Sam Byrne's office?

4 A. There were a lot of emails going back and forth
5 between Gary Peters and me.

6 Q. Was one them relating to your effort to get the
7 club in place of Mr. Blixseth?

8 A. Absolutely not.

9 Q. As of March 21, '08, were you subject to an
10 injunction by the family court about interfering with
11 the sale of the Yellowstone Club?

12 A. I don't recall if there was an injunction or
13 not. I recall that the judge said -- tell me the date
14 again.

15 Q. Early March '08. Were you subject to an
16 injunction from the family court prohibiting you from
17 interfering with the sale of the Yellowstone Club?

18 A. I don't remember if it was an injunction. I
19 remember that the judge said to -- there can only be one
20 of us negotiating with that and that would be Tim since
21 he had been doing that.

22 Q. With respect to this \$5 million loan, did you
23 know at the time that you were pledging Blxware security
24 that was subject to a preliminary injunction?

25 THE WITNESS: I don't know how to answer that,

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1 because it wasn't -- we were doing things besides at the
2 same time.

3 MR. HOLAHAN: You can say you don't understand.

4 THE WITNESS: Yeah, I'm not sure how to answer
5 that question.

6 BY MR. FLYNN:

7 Q. Let's go through the loan document. In the
8 first paragraph it references a correct copy of a
9 certain license agreement between borrower and
10 guarantor.

11 MR. HOLAHAN: Which document are you looking at
12 now?

13 THE WITNESS: 22.

14 MR. FLYNN: Exhibit 22.

15 Q. Did you issue -- who owned the technology as of
16 March 6, 2008, that was pledged as collateral to
17 Wachovia Bank for this \$5 million? Who owned it,
18 Ms. Blixseth?

19 A. I don't recall if it was me, personally, or it
20 was Blxware.

21 Q. Did you enter into a license agreement giving
22 it to Blxware, licensing it to Blxware?

23 A. License it for use?

24 Q. Yes.

25 A. I believe so.

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1 Q. Let's go over to page 3 of Exhibit 22,
2 Representations and Warrantees. You know what they are,
3 don't you, Ms. Blixseth?

4 A. My answer is the same as you've asked me now
5 five times. I think I'm generally aware of what
6 representations and warrantees are.

7 Q. This reads, "To induce the bank to enter into
8 this letter and make the loan hereunder, the Borrower
9 represents and warrants to the bank that, A, Litigation,
10 there are no legal or arbitration proceedings or any
11 proceedings by or before any governmental or regulatory
12 authority or agency now pending or to the knowledge of
13 the Borrower threatened against the Borrower, the
14 Guarantor or any of Guarantor's subsidiaries, which,
15 with respect to this agreement, the note, the guarantee,
16 the security agreement or any of the transactions
17 contemplated hereby or thereby or which could have a
18 material adverse effect on the financial condition or
19 operations or the prospects or business of, one, the
20 Borrowers or, two, the Guarantor and its subsidiaries."

21 Now that was false, wasn't it, Ms. Blixseth?

22 A. If it -- if it says that they weren't aware of
23 the litigation when there was other ways to use the
24 technology, then what's part of -- that we were working
25 on at Bellevue, which is part of -- or excuse me,

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1 different than eTreppid.

2 Do you want me to wait so you can hear my
3 answer?

4 Wachovia was brought to me by Liner, so Liner
5 was the law firm representing me in the eTreppid
6 litigation.

7 Q. So there was litigation pending relating to the
8 technology; is that correct, Ms. Blixseth?

9 A. To some of the technology, but not to all of
10 the technology that Blxware was developing.

11 Q. So this statement is false. There was
12 litigation pending, wasn't there, Ms. Blixseth?

13 A. I would say that there was litigation still
14 pending.

15 Q. And your law firm, Liner, was representing you
16 and Montgomery in the litigation that was pending; isn't
17 that true, Ms. Blixseth?

18 A. That is true.

19 Q. Did you read this document before you signed
20 it?

21 A. I don't recall.

22 Q. Now did you know that the litigation in Nevada
23 involving Montgomery and eTreppid when you signed it
24 involved the preliminary injunction in connection with
25 the technology you were pledging as collateral?

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1 A. With the technology that eTreppid and
2 Montgomery were suing over, I did know that by then.

3 Q. What did you do with the \$5 million?

4 A. That's what I was trying to answer a few
5 minutes ago. I paid -- I got things current. I got
6 interest current. I paid -- I paid things off.

7 Q. Did you pay Western Capital Partners?

8 A. They may have been -- they may have gotten some
9 interest then. I'm not sure.

10 Q. Did you pay American Bank and Leon Royer.

11 A. I believe they got some interest current in
12 there, not paid the loans off.

13 Q. Did you pay First Bank & Trust?

14 A. You know, I should just say I don't recall.
15 The money was used to get things current and, hopefully,
16 have some stability until we got the other stuff
17 resolved with the marital.

18 Q. Isn't it true that you didn't pay anybody but
19 gave \$1.5 million to Tony Robbins of the \$5 million?

20 A. That's not true.

21 Q. Did you give \$1.5 million to Tony Robbins?

22 A. No, I did not.

23 Q. Did you give \$1.5 million to any entity other
24 than Blxware?

25 A. No I not.

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1 Q. Where did the \$1.5 million go?

2 A. I don't know what 1.5 you're talking about.

3 Q. Where did the \$5 million go? Give me your best
4 memory in general.

5 MR. HOLAHAN: She already answered that
6 question, counsel.

7 THE WITNESS: I can't.

8 MR. HOLAHAN: She already answered that
9 question to the best of her recollection.

10 BY MR. FLYNN:

11 Q. Can you give me any idea whether you paid any
12 kind of an approximate amount to Western Capital, a
13 dollar? 10,000? A hundred thousand?

14 A. I already answered that. I believe some of
15 their interest was paid when I got this, but I'm not
16 positive.

17 Q. Same with American Bank?

18 MR. HOLAHAN: Asked and answered, Counsel.

19 MR. FLYNN: Let's move on.

20 Q. Is this your signature at the end,
21 Ms. Blixseth?

22 A. Looks like it.

23 MR. GLASSER: What exhibit are you on,
24 Mr. Flynn?

25 MR. FLYNN: Same exhibit.

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1 MR. HOLAHAN: 22.

2 MR. GLASSER: 22.

3 BY MR. FLYNN:

4 Q. So it's your testimony that Liner represented
5 you in this transaction?

6 MR. HOLAHAN: No, she did not say that.

7 THE WITNESS: Yes, I did. They represented me.
8 They brought Wachovia to me and that's how I met
9 Wachovia.

10 BY MR. FLYNN:

11 Q. Thank you. Thank you.

12 In fact, you had a meeting in Steve
13 Yankelevitz's office within two weeks before this loan
14 in which you and Yankelevitz and an individual named
15 Vijay Chandran were present; isn't that correct,
16 Ms. Blixseth?

17 A. I had a meeting with those three at the Liner
18 firm.

19 Q. Thank you.

20 What is your best memory of what was said at
21 that meeting?

22 MR. HOLAHAN: Objection. Attorney-client
23 privilege.

24 MR. FLYNN: No. Mr. Chandran is a
25 representative of -- he's a representative of Wachovia

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1 Bank, Mr. Holahan.

2 MR. HOLAHAN: That true?

3 THE WITNESS: Yeah.

4 BY MR. FLYNN:

5 Q. What was said at that meeting, Ms. Blixseth?

6 A. It was an introduction. I don't really recall.
7 It was an introduction.

8 Q. Did you advise Mr. Chandran at that time about
9 the litigation in Nevada.

10 A. Not to my best recollection.

11 Q. Did Mr. Yankelevitz advise Mr. Chandran about
12 the litigation in Nevada?

13 A. I don't recall.

14 Q. Was any kind of kickback paid to Mr. Chandran?

15 A. I have no idea.

16 Q. By you or Mr. Scalia?

17 A. I can tell you I did not pay any kickback to
18 anybody and I can't speak for Jack, but I assume that's
19 negative as well.

20 Q. Did you represent to Mr. Chandran that you had
21 in your possession, Blxware, a contract with the federal
22 government, a black budget contract at that time -- at
23 the time of the meeting?

24 A. And what was the date of the meeting?

25 Q. Within the two weeks before March 6th, 2008?

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1 A. No, I did not.

2 Q. Did Mr. Yankelevitz represent to Mr. Chandran
3 that there was a black budget contract owned by Blxware
4 involving Montgomery's technology?

5 A. Not in front of me.

6 Q. Did anyone represent to Wachovia Bank that
7 Blxware had a contract in place with the federal
8 government in connection with the Blxware technology?

9 A. Not that I'm aware of.

10 Q. What did you tell Mr. Chandran during this
11 meeting?

12 A. I've already -- I've already said that I don't
13 recall everything that was said in the introduction,
14 kind of explained the technology, what we were trying to
15 do and that was it.

16 Q. What did you explain?

17 A. Explained that, that Dennis had come on board,
18 explained kind of the history of when he came on board,
19 what we thought we were going to be able to do, may have
20 talked about the injunction because part of what I had
21 to explain was why the burn rate went on so long before
22 we could try to take it to commercial and have cash
23 flow.

24 Q. So your memory now is you believe that someone
25 disclosed to Mr. Chandran the injunction?

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1 A. I'm just saying may have. In going through why
2 by this date we still hadn't taken anything to the
3 marketplace, that may have been talked about.

4 Q. As of March '08 did you even have a product?

5 A. Not that we could take to the marketplace.

6 Q. Were any representations made to you -- made by
7 you to Mr. Chandran in the meeting with regard to having
8 a product that you could take to the marketplace?

9 A. Not by me.

10 Q. Did anyone represent to Wachovia Bank in
11 exchange for this \$5 million -- did anyone represent to
12 Wachovia Bank in exchange for this \$5 million that the
13 technology was about to be sold to either Raytheon or
14 the federal government and, basically, the \$5 million
15 can get repaid as soon as those contracts are paid?

16 Did you make any kind of representations like
17 that?

18 A. No, I did not.

19 Q. Did you make any kinds of representations like
20 that in any document to anybody?

21 A. Not that I'm aware of. We had meetings with
22 Raytheon. We sent people to go meet with them, so that
23 could have been disclosed that there were meetings or
24 ongoing talks.

25 Q. Did you prepare an executive resume in which

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1 those representations in general were made to loads of
2 people?

3 A. Not that I'm ware of.

4 MR. FLYNN: Let me just finish Wachovia and
5 then we'll go for lunch.

6 MR. HOLAHAN: We're not going to stay through?

7 MR. FLYNN: You want to go straight through?

8 MR. HOLAHAN: Do you?

9 MR. FLYNN: Sure.

10 MR. HOARD: Do I get a vote?

11 MR. BLIXSETH: We can get you takeout.

12 MR. HOLAHAN: What is the document?

13 THE WITNESS: Demand promissory note.

14 MR. FLYNN: Yeah, let's put that one aside.

15 Yeah, would you mark this, please, 23A, please,
16 Stephanie.

17 (Exhibit 23A was marked for identification.)

18 BY MR. FLYNN:

19 Q. We'll put it aside, Collateral License
20 Agreement.

21 Let me just ask you, is this your signature on
22 Exhibit 23A, Ms. Blixseth, next to last page.

23 A. Give me a second.

24 Q. Last two pages, actually.

25 A. Looks like my signature.

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1 Q. Maybe the last page is the notary?

2 A. No, it's mine.

3 Q. No, it's your signature too.

4 A. Yeah.

5 MR. FLYNN: That's confirming the license
6 agreement. Let's go to the license agreement.

7 (Exhibit 24 was marked for identification.)

8 BY MR. FLYNN:

9 Q. Do you recognize Exhibit 24, Ms. Blixseth, as
10 being the license agreement securing the Wachovia loan,
11 saying you were licensing your technology to Blxware?

12 I don't believe your signature is on it, but if
13 you look on page 6 and 7, the software schedule -- 6, 7
14 and 8, the software schedule, the question for you,
15 Ms. Blixseth: Is this licensing agreement, does it
16 basically reflect your understanding that you owned all
17 the software technology that Montgomery had?

18 A. Yes.

19 Q. Thank you.

20 MR. BLIXSETH: If anybody is hungry, we'll get
21 somebody to run in some sandwiches if you tell me what
22 you're hungry for.

23 MR. HOLAHAN: We can take a break.

24 MR. FLYNN: Yeah, we'll take a break.

25 THE WITNESS: You're throwing these at me so

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1 fast, I want to be able to see them.

2 BY MR. FLYNN:

3 Q. You can put the license agreement aside.

4 That's going to be for another day.

5 A. But there's no signatures. I'm trying to look
6 to see who presented this.

7 Who presented this?

8 Q. These are Wachovia loan documents that are on
9 file with the court.

10 A. Okay.

11 Q. Matter of fact, you can see the docket entries
12 at the top of the document?

13 A. Okay.

14 Q. This is the 3 million on June 23, '08,
15 Ms. Blixseth, so you're now getting another 3 million.

16 A. That's what I was recalling when you were
17 asking about the 8- and I said it was 5- and 3-.

18 Q. Right.

19 Now at this time were you in default with
20 Western Capital in agreeing to do a loan modification
21 with them on June 23rd, '08, on or about that time?

22 A. I believe so, because I think that's when
23 Matthew was trying to renegotiate the --

24 Q. Did you disclose to Western Capital -- to
25 Wachovia that you were in default with Western Capital

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1 Partners?

2 A. I don't recall.

3 Q. Did you disclose to Wachovia at this time that
4 you were in default with First Bank & Trust?

5 A. I don't recall. I don't recall if I was then
6 with them.

7 Q. Did you disclose to Wachovia that you were in
8 default with American Bank?

9 A. Yeah, I don't recall.

10 Q. Okay. Now on this \$3 million, what did you do
11 with that 3 million, Ms. Blixseth?

12 A. Every time I got money from borrowing, I tried
13 to catch things up, pay things, cover overhead, that
14 kind of thing, so I would just say that's my recall of
15 this amount as well.

16 Q. Where are all the records relating to where all
17 this money went?

18 A. You probably have them, because they would have
19 been on Jory's computer.

20 Q. Ms. Blixseth, where are the records relating to
21 where all this money went?

22 A. Who knows? Probably on Jory's computer.

23 Q. "Who knows?" Is that your answer?

24 MR. HOLAHAN: She said --

25 THE WITNESS: I didn't say, "Who knows?" I

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1 said they're probably on Jory's computer.

2 BY MR. FLYNN:

3 Q. Thank you very much.

4 Now, Ms. Blixseth, did you tell Jory Russell on
5 or about June 24th or thereafter to delete or destroy
6 documents off his computers?

7 A. I told Jory Russell to not only not destroy
8 anything, but anything that he had in his possession to
9 turn over and anything that -- any question he was
10 asked, to answer the truth.

11 Q. And if, in fact, these financial records for
12 Blxware and these entities have been destroyed off his
13 computers, is it still your testimony that you believe
14 they were previously on the computers?

15 A. I assume, because that's the -- and it's an
16 assumption of mine because that's the computer Jory
17 used.

18 MR. FLYNN: Okay. And I'll represent for the
19 record the financial documents relating to where these
20 monies went are not and if they were on the Russell
21 computers, they have been destroyed.

22 MR. HOLAHAN: Are you representing that as an
23 expert witness?

24 MR. FLYNN: I'm just putting that on in the
25 record at this point.

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1 MR. HOLAHAN: Do you have any papers
2 documenting that?

3 MR. FLYNN: Yeah, we'll get into it,
4 Mr. Holahan.

5 Q. Let's get into page 3 of this document.

6 A. Which document is this?

7 Q. Same document, the \$3 million you got on
8 June 23rd. Let me ask you this: From the little
9 documentation we've been able to put together it appears
10 that every time you got large sums of money you stopped
11 paying your bills; is that true or false?

12 A. That would almost be reverse of what I would do
13 when I got sums of money. I would try to catch up and
14 pay everything.

15 Q. We'll see.

16 Representations and warranties --

17 A. Tell me what page.

18 Q. -- page 3.

19 "To induce the bank to enter into this
20 agreement and make the new loan hereunder, the Borrower
21 represents the warrants to the bank that, A,
22 litigation" -- it's the same litigation clause that
23 there's no litigation pending.

24 Well, in fact, at that time you were involved
25 in evidentiary hearings on contempt orders against

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1 Montgomery that you were paying for in connection with
2 litigation, isn't that true, Ms. Blixseth, in June '08?

3 A. That Blxware was paying for?

4 Q. That you, Edra Blixseth, the money was coming
5 from you, was it not?

6 A. The money was being paid by Blxware.

7 Q. To pay --

8 A. That was part of the burn rate that we --

9 Q. You knew on June 23, '08, in fact, Blxware and
10 Montgomery were in contempt proceedings for not
11 producing the technology in the litigation; isn't that
12 correct, ma'am?

13 A. I can't -- I can't answer if I was aware of
14 that at the time or that's what was going on at the
15 time.

16 Q. We'll see.

17 In fact, you were subpoenaed to come in and
18 testify for those contempt proceedings, were you not?

19 A. I'm not aware that I was. I didn't testify.

20 Q. Let's go to the last page.

21 Is that your signature for this 3 million?

22 A. I believe so.

23 Q. When you took this \$3 million from Wachovia
24 Bank, did you have the means to repay it?

25 A. I believe I did.

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1 Q. And why do you believe that you did?

2 A. I believed every time I took out a loan that I
3 was going to get things finally settled with Tim and I
4 would have the assets and the cash flow to be able to
5 consolidate the assets that I had that were free and
6 clear and be able to take care of all of these loans and
7 get on a positive cash flow.

8 MR. FLYNN: Thank you.

9 Let's look at Exhibit 28, Pledge Agreement.

10 (Exhibit 28 was marked for identification.)

11 BY MR. FLYNN:

12 Q. Now this is dated the 23rd of June. In here
13 you're pledging the security while there are contempt
14 proceedings going on in connection with the security in
15 which you're a party.

16 Did you know that on or about June 23rd?

17 MR. HOLAHAN: Could you please -- I'm sorry,
18 Counsel, she's a party to what?

19 MR. FLYNN: She was a defendant at this point
20 in the litigation, Mr. Holahan. I'm sorry you're not
21 aware of the facts, sir, but that's not my problem.

22 MR. HOLAHAN: Was she added after the
23 injunction? Because she's not on the injunction.

24 THE WITNESS: Yeah, I was added.

25 MR. FLYNN: The injunction is back in

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1 February '06 --

2 MR. HOLAHAN: Right.

3 MR. FLYNN: -- the order in the federal court
4 confirming it is August 2007.

5 MR. HOLAHAN: Right.

6 MR. FLYNN: We're now into 2008. Please follow
7 along, Mr. Holahan.

8 THE WITNESS: But it wasn't Blxware, it was
9 Dennis Montgomery and eTreppid.

10 BY MR. FLYNN:

11 Q. What were you pledging here that was then the
12 subject of contempt hearings in federal court and the
13 injunction to get this \$3 million? What were you
14 pledging?

15 A. The -- what we were going to be doing with the
16 technology, some of which had nothing to do with the
17 eTreppid technology.

18 Q. What part of it didn't have anything to do with
19 eTreppid technology?

20 A. We were working a lot of different things in
21 Bellevue and some things separate and we hoped to get
22 the eTreppid thing resolved, but, again, I'm assuming
23 that since Liner brought Wachovia to me and Liner looked
24 at the things that they were aware of what was going on.

25 Q. Let's cut through this. Is that why you

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1 confessed \$26.5 million in judgments two months later to
2 the Trepp parties if the technology didn't belong to
3 Trepp?

4 A. First of all, I don't think two months later is
5 when the judgment was entered, but second of all --

6 Q. I'm not talking about when the judgment was
7 entered. I'm talking --

8 A. That's what you just said. You said when you
9 entered into --

10 Q. -- a settlement?

11 A. That's not what you said.

12 Q. A confession of judgment.

13 The agreement to confess the judgment was in
14 September '08; isn't that true, Ms. Blixseth?

15 A. That was the settlement agreement between
16 eTreppid and Montgomery --

17 Q. In which you agreed to confess judgments if you
18 didn't pay them \$26.5 million?

19 A. I don't know if that was part of what the final
20 agreement was. I don't know if that was in there.

21 Q. Let's look at some emails -- and then we'll
22 break for lunch -- between you and Mr. Royer from
23 American Bank when you were getting all this money.

24 MR. HOLAHAN: Let's see this.

25 ///

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1 BY MR. FLYNN:

2 Q. Do you remember these emails, Ms. Blixseth?

3 A. I haven't had time to look at them yet.

4 MR. GLASSER: What exhibit are you on now?

5 MR. FLYNN: Is that Exhibit 24?

6 THE WITNESS: Yes. No, 29, I think.

7 MR. HOLAHAN: No, 29.

8 THE WITNESS: It's hard to tell it's a -4 or
9 -9.

10 MR. FLYNN: What was the last one?

11 MR. HOLAHAN: It's 29. The pledge agreement is
12 28. You skipped two.

13 MR. FLYNN: Okay.

14 MR. GLASSER: 29, all right.

15 MR. FLYNN: 29.

16 MR. GLASSER: Pledge agreement is 29.

17 MR. HOLAHAN: Did you mean to skip two?

18 MR. FLYNN: Yeah, I intended to skip.

19 MR. HOLAHAN: 26 and 27.

20 MR. FLYNN: But just so we're accurate, what
21 did the court reporter put on that exhibit?

22 MR. HOARD: 30 is an email.

23 THE WITNESS: I think it's 29. It looks like
24 24, I said, but I think it's 29.

25 MR. GLASSER: 29 in the set you gave us is --

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1 MR. HOARD: It's 30.

2 MR. GLASSER: Well, 29, in the set is the
3 pledge agreement.

4 MR. HOLAHAN: Oh, oh-oh. Pledge agreement is
5 28 that the court reporter marked.

6 MR. GLASSER: It's 29 in the --

7 MR. FLYNN: I'll fix that at the break. For
8 the time being we'll call it Exhibit 30.

9 (Exhibit 30 was marked for identification.)

10 MR. BLIXSETH: Are you leaving 24 and 25 out?

11 MR. FLYNN: Yeah, I'm not going over them right
12 now.

13 I want to go over these emails before we break
14 for lunch, Ms. Blixseth.

15 MR. GLASSER: So the emails are 30.

16 MR. FLYNN: And we'll fix it at lunch, Brian.
17 We'll call them Exhibit 30.

18 MR. GLASSER: Okay.

19 BY MR. FLYNN:

20 Q. Okay. Ms. Blixseth, we first --

21 A. Are these in chronological order?

22 Q. It's generally an email train, so let's start
23 from the back. Let's see what the last email is.

24 A. You actually have them in order first to last,
25 it's right.

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1 Q. Okay.

2 A. 4/14.

3 Q. 4/14, okay. We've got them in chronological
4 order going forward, for the record.

5 First one is from a Leon Royer and let me ask
6 you this first: After having quickly looked at these
7 emails -- this is what we have because they were sent to
8 Peters and we've retrieved some -- how long had you been
9 emailing Royer?

10 And by the way, for the record we've subpoenaed
11 all the American Bank records.

12 How long had you been emailing Royer about the
13 loan being in default before April 14th, of '08?

14 A. I would have no idea.

15 Q. Had it been going on for months?

16 A. I would have no idea.

17 Q. Had you defaulted on the American Bank loan --
18 or strike that.

19 How much had you received as of April 14th,
20 2008, from American Bank?

21 A. American Bank had a line of credit to me of
22 2 million that had a -- when Matthew was trying to close
23 out the Story Mill, they were at their limit and Leon
24 had suggested that they loan me the \$5 million for the
25 trailer park.

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1 So the \$5 million didn't go to me, it went to
2 pay off the trailer park. That was a Story Mill
3 obligation back to me. So the total with American Bank
4 is 7 million of which 2 million was my personal and
5 5 million was Story Mill.

6 Q. As of April 14th?

7 A. I believe so.

8 Q. When was the 5 million given to your son?

9 A. I don't believe it was given to him. I believe
10 it was given to pay off to purchase the trailer park and
11 I don't remember when that was. It must have been '07.

12 Q. To purchase or to pay off the trailer park,
13 Ms. Blixseth?

14 A. I think it was to purchase it. I don't know.
15 I wasn't involved in that, but I think it was the
16 purchase.

17 Q. How much was paid for the trailer park?

18 A. I believe it was the 5 million.

19 Q. When was the 5 million paid by American Bank?

20 A. I just said I don't recall, but I believe it
21 was in '07.

22 Q. Was it in November and December of '07?

23 MR. HOLAHAN: If you don't recall, you don't
24 recall.

25 THE WITNESS: Yeah, I don't recall.

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1 BY MR. FLYNN:

2 Q. Okay. When did you -- as of April 14, '08, how
3 long had you been in default with American Bank on the
4 7 million?

5 A. I don't recall.

6 Q. Now Mr. Royer writes on April 14, to you --
7 you're LearG2; correct?

8 A. Correct.

9 Q. Lear, is that a Lear jet?

10 A. It's my dogs.

11 Q. G2, is that dog too?

12 A. It is.

13 Q. And you happen to have a G2; is that correct?

14 A. I'm sorry?

15 Q. Did you have a G2B jet?

16 A. What does that have to do with anything? Lear
17 and G2 are my dogs that are deceased and that was my
18 email address.

19 Q. "Good morning, Edra. We look forward to
20 receipt of the payoffs on April 21 at the least."

21 What payoffs?

22 A. You know, I don't know.

23 Q. The whole 7 million?

24 A. I don't know.

25 Q. Next email, April 13 -- well, actually it's the

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1 day before, April 13, this is from you to Royer and you
2 say -- Royer writes, "Who will be sending the funds?"

3 You respond, "Sorry, Leon. I thought I made it
4 clear, but I must not have. I will be sending the funds
5 out of my account, Edra."

6 What funds?

7 A. I think that this was one of the phoney Gary
8 Peters' loans, wires that never came to fruition when I
9 thought that they were going to.

10 Q. As of April 14th you had 5 million from
11 Wachovia. We haven't got to the First Bank & Trust loan
12 yet.

13 How much did you get in March of '08 from First
14 Bank & Trust?

15 A. I don't recall. Without the things in front of
16 me, I don't recall the dates to answer questions like
17 that.

18 Q. That was an \$8-million letter of credit?

19 A. The ultimate amount was 8-, but that's not what
20 it started out being so I don't recall what the dates
21 were for those.

22 Q. As of March -- as of April 14th, you had gotten
23 5 million from Wachovia, you had gotten 8 million, as I
24 understand it, from First Bank. We'll go through the
25 documents.

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1 Did you pay Royer anything?

2 A. I don't recall.

3 Q. Did you tell Royer the funds would be coming
4 out of your account, but they're coming from a third
5 person you were also borrowing money from?

6 A. He knew how I was getting money to pay him was
7 through a different loan, the loan person, yes.

8 Q. What did you tell him?

9 A. I don't recall this one, but I would have told
10 him the truth.

11 Q. Let me see if I --

12 A. He knew I didn't have money coming in from
13 income.

14 Q. Did you tell him that you were borrowing money
15 from someone else who didn't know about his loan to pay
16 him?

17 A. Of course not.

18 Q. Where was the money coming from that's
19 referenced in these emails?

20 A. I just answered your question.

21 Q. From Gary Peters?

22 A. Based on reading the one you're asking me to
23 read, I cannot answer that question.

24 Q. Let's go to the next one.

25 And the next one appears to be the duplicate of

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1 the first one, maybe part of a chain.

2 Third page, from LearG2 to

3 CEO@1800investmentgroup.com.

4 Is that Gary Peters?

5 A. Yes, it is.

6 Q. "Gary, this is why I was hoping to get that
7 bridge put through ASAP, even if it is only particle."

8 A. That means "partial," I think.

9 Q. "This is the bank that Tim is getting lots of
10 information from. Think I told you about them, want to
11 get the sig loan of mine that is past due and the one I
12 get from Matthew paid off as I had told them I would do
13 it on the 15th before everything changed."

14 What did you mean by "before everything
15 changed"?

16 A. I have no idea. There was so many changes. I
17 would have no idea which one this was in reference to.

18 Q. "Now they're wanting to help Tim with putting
19 pressure on me."

20 Let me break in there. Who told you that
21 American Bank wanted to put pressure on you?

22 A. I just knew by the way that they were doing
23 things. Tim had worked with Leon Royer and Bruce
24 Erickson a lot of times in a lot of different settings
25 to get information that put pressure on other people, so

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1 I just assumed it was the same MO there.

2 Q. All right. Let me see if I understand this
3 correctly. You're in default on \$7 million. You're
4 attributing it to put -- to Tim, because he's having the
5 bank put pressure on you even though you're in default
6 on 7 million.

7 Is that what you're saying?

8 A. No, that's what you said. You want me to say
9 what I want to say?

10 Q. Yeah. What are you saying?

11 A. What I was saying is banks can be either
12 helpful or not helpful when you're in situations where
13 you're trying to renegotiate loans or pay things or have
14 things done differently. They can either be helpful or
15 not helpful.

16 With Tim behind the scenes -- and this Leon
17 Royer is not the only one. He called banks he doesn't
18 deal with, so I knew what he was doing to put pressure
19 on me.

20 Q. How did you know this again?

21 A. They would tell me that he called.

22 Q. Let me get that straight. American Bank, Leon
23 Royer told you --

24 A. No, I didn't say that. You said how were these
25 others.

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1 Q. How did you know that Tim was doing something
2 with American Bank to put pressure on you? Just explain
3 that to me.

4 A. Well, I had been with him for 25, 26 years and
5 the MO of what I had seen him do before with other
6 people would have me believe that he was doing the same
7 thing now to me.

8 Q. So did Leon Royer say anything to you about Tim
9 using the bank to pressure you?

10 A. No, but their attitude and their behavior and
11 what they were willing to do changed.

12 Q. What changed?

13 A. They were always willing to be kind of
14 understanding, rewrite some things. They had been
15 helpful to me, actually, on the 2 million, thinking that
16 I was coming to the end and going to get things settled.
17 That's kind of what we all assumed.

18 And now that that these things were coming due,
19 rather than giving me time or buying me time or figuring
20 out another way to do things, they were putting a lot of
21 pressure on me.

22 Q. So their attitude is what you detected;
23 correct?

24 A. That's somewhat of what I detected, yes.

25 Q. Did Leon Royer know you had just borrowed \$5

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1 million from Wachovia Bank?

2 A. He knew I was borrowing money to survive, so he
3 may have.

4 Q. Were you signing documents giving them access
5 to your credit reports?

6 A. I don't recall doing that, but I may have if
7 they asked for it.

8 Q. Were you giving them cash-flow analyses?

9 A. I don't know if I gave any to American Bank or
10 not.

11 Q. Were you giving them financial statements,
12 Ms. Blixseth?

13 A. I believe that they would ask for updated
14 financial statements.

15 Q. Now were you reporting on your financial
16 statements your Western Capital \$13 million loan?

17 A. I believe I was not.

18 Q. Were you fudging the financial statements from
19 loan to loan and from time period to time period to try
20 to get more money?

21 A. No. In fact, you used the word "fudging."
22 When things would change, when the asset -- as an
23 example, something you gave me a few documents ago,
24 showed that we valued Porcupine Creek at 200 million,
25 that's because that's the amount that Tim and I were

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1 putting on it and he was putting 200 million on Desert
2 Ranch as well.

3 Those things changed as the market changed and
4 as time went on so --

5 Q. In reference to some of the testimony you just
6 gave, I'd like to know --

7 A. You weren't listen to my answer. You were
8 reading what Tim wrote.

9 Q. I heard you. I heard you.

10 Ms. Blixseth, please. I want to know exactly
11 who told you when and under what circumstances from
12 these other banks that Tim Blixseth was doing something
13 to put pressure on you.

14 Please identify any individual who told you
15 anything.

16 A. Are you talking about this email?

17 Q. No. I'm talking about your testimony of a few
18 moments ago.

19 A. Alan Rye told me that Tim would call him. He
20 had no business with Alan Rye. He wasn't doing business
21 with Alan Rye anymore; that he was asking questions
22 about my dealings.

23 Kevin McGuire from Palm Desert National Bank
24 would tell me that Tim was calling and giving them
25 information or trying to get information.

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1 Q. What did Mr. Rye say to you that Tim Blixseth
2 had said to him and when?

3 A. Well, one of the things was that he called and
4 asked me if Jim Dolan was going to be making the payment
5 on the BFI note and I said I assumed so, because I
6 talked to Jim and asked if he was going to be needing an
7 extension and he said no.

8 And he said, "Well, Tim is telling me that
9 Jim's not going to make the payment." And I said,
10 "Well, that's contrary." I called Jim afterwards, told
11 him what Alan Rye had told me and he said, "No, I'm not
12 asking for an extension. I'm planning on making a
13 payment."

14 Q. When was that, Ms. Blixseth?

15 A. That would be sometime in '08, so the latter
16 part of '08 because the payment was due in January of
17 '09.

18 Q. Was the payment made?

19 A. No, of course not.

20 Q. So let me see if I understand this. Sometime
21 in '08, Mr. Blixseth, who has two children in BFI that
22 was securing the loan to First Bank & Trust --

23 A. Those were adult children. It wasn't in a
24 trust.

25 Q. -- wanted to know whether -- how much was the

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1 payment for?

2 A. \$5 million.

3 Q. -- whether a \$5 million payment was going to
4 come in to BFI, understanding that his two children are
5 beneficiaries under that instrument.

6 Is it your testimony that in that some way
7 shows that Mr. Blixseth was putting financial pressure
8 on you through First Bank & Trust?

9 A. Alan told me that -- that, first of all, he
10 shouldn't have talked to Tim about it. Beau and Morgan
11 are adults. Tim had no reason to call him. If Beau and
12 Morgan had a question they could have called him.

13 Second of all, he said that it was clear Tim
14 had said, "I don't think that that note is going to be
15 worth anything. Jim Dolan is having financial pressure.
16 I don't think that the security for Spanish Peaks is
17 going to be worth anything," and, basically, trying to
18 put the fear that it was going to end up being a bad
19 loan because BFI was not going to be paid.

20 Q. Okay. Well, we will talk to Mr. Dolan and
21 Mr. Rye.

22 In fact, the payment was not made for
23 5 million?

24 A. Correct.

25 Q. Kevin McGuire, what did he say and when?

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1 A. Kevin just told me that he got calls from Tim
2 intermittently asking what I was doing and saying that I
3 was going to end up with nothing and be careful of
4 loaning money to me and those kind of things.

5 Q. Now please explain to me how as of the date you
6 took \$35 million from Byrne, August 14th, 2008, and you
7 were showing \$900 million in your net worth, please
8 explain to me as fully as you can how you went from
9 \$900 million when you got the 35- million, owned
10 Porcupine Creek, owned the Yellowstone Club, and ended
11 up in bankruptcy some six, seven months later with a
12 negative net worth.

13 Please explain that to me, Ms. Blixseth.

14 MR. HOLAHAN: You're asking for a very long
15 answer. If you're willing to let her answer --

16 MR. FLYNN: I'm willing to let her answer.

17 Q. Please explain how you went from an 8- to
18 \$900 million net worth on your financial statements on
19 August 15th, which we're going to get into, and how you
20 ended up broke and cheating all these people out of all
21 this money.

22 How did that happen, Ms. Blixseth?

23 MR. HOLAHAN: Object to your --

24 MR. FLYNN: I'll withdraw "cheating."

25 Q. Not paying all these people all this money and

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1 Byrne ends up with your major assets. Please explain
2 how that happened. Go ahead.

3 A. I don't even know how to begin to start.

4 MR. HOLAHAN: I think you should parse that
5 question a little bit better.

6 BY MR. FLYNN:

7 Q. Can't answer it?

8 A. It's --

9 MR. HOLAHAN: Do you want to know how she went
10 from \$900 million to having no money a few months later.

11 MR. FLYNN: Yeah, and Byrne ends up in control
12 of everything. I want to know that.

13 Q. How did that happen with Tim Blixseth telling
14 Kevin McGuire she's going to end up with nothing.
15 Please explain to me how that happened, Ms. Blixseth.

16 A. It's so broad it's hard to answer, but I'll try
17 to answer.

18 Tim Blixseth not only called banks, he
19 called -- he -- Warren Trepp. He got involved in
20 anything, an asset, that came my direction and tried to
21 sabotage it and did a successful job of sabotaging.

22 So a lot of things that I counted on -- we had
23 a contract to settle the eTreppid so that Blxware could
24 go forward. We ended up not being able to have the
25 money to make the first payment, so that fell apart.

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1 That money coming in had a lot to do with what
2 I was counting on coming in. A lot of what I was told
3 to be certain things ended up not being what I was told
4 them to believe.

5 Based on my financial statements that you say I
6 cheated people out of, I used what Tim Blixseth turned
7 over on the books and records of values. I used what
8 was talked about in the family court.

9 MR. HOLAHAN: Are you going to continue to
10 whisper to your client in front of my client as she's
11 answering?

12 THE WITNESS: And smile and laugh.

13 MR. FLYNN: Do you have anything else to add?

14 MR. HOLAHAN: No. She's not through, but are
15 you going to continue?

16 MR. FLYNN: Mr. Holahan, please.

17 Q. Do you have anything else to add?

18 MR. HOLAHAN: Mr. Flynn --

19 MR. FLYNN: I'm not responding, Mr. Holahan.

20 MR. HOLAHAN: Mr. Flynn --

21 MR. FLYNN: I'm not responding.

22 MR. HOLAHAN: Mr. Flynn --

23 MR. FLYNN: Mr. Holahan --

24 MR. HOLAHAN: Mr. Flynn --

25 MR. FLYNN: Mr. Holahan --

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1 MR. HOLAHAN: Are you going to continue --

2 MR. BLIXSETH: Sit down, Jack.

3 MR. FLYNN: Hold on. The record will reflect
4 that Mr. Holahan just leaned across the table and --

5 This is tape recorded; is that correct,
6 Stephanie? So the noise of that slap in my face on my
7 documents --

8 MR. HOLAHAN: I'm trying to get your attention.
9 I'm making an objection and you won't stop talking.

10 MR. FLYNN: Mr. Holahan, please cease and
11 desist.

12 MR. HOLAHAN: No, you stop talking.

13 MR. FLYNN: You interrupted the witness in the
14 middle of an answer.

15 Q. Ms. Blixseth, do you have anything further to
16 add to your answer?

17 MR. HOLAHAN: Yes, she does, but she won't do
18 it now. We're going to break for lunch.

19 MR. FLYNN: And Mr. Holahan, you ever do that
20 to me again, sir, I will see you outside --

21 MR. HOLAHAN: Okay.

22 MR. FLYNN: -- at the end the deposition. Do
23 you understand?

24 MR. HOLAHAN: Yes.

25 MR. FLYNN: You don't professionally misbehave

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1 like that, Mr. Holahan.

2 MR. HOLAHAN: Well --

3 THE WITNESS: Thank you for the glasses.

4 MR. BLIXSETH: You might need them.

5 MR. FLYNN: We're just at the beginning. We're
6 at the tip of the iceberg, Mr. Holahan.

7 THE REPORTER: Go off?

8 MR. HOLAHAN: We're halfway through the day.

9 MR. FLYNN: We're at the tip of the iceberg,
10 tip of the iceberg.

11 THE WITNESS: Why does Mike Flynn stare me
12 down, throw something towards my direction and say, "Tip
13 of the iceberg?"

14 MR. FLYNN: It wasn't. It was thrown on my
15 papers.

16 THE WITNESS: Were you not staring me down as
17 you said it? Can't have it both ways, Mike.

18 MR. FLYNN: Let's take a break.

19 (Luncheon recess.)

20 BY MR. FLYNN:

21 Q. Ms. Blixseth, at the end of the -- before the
22 lunch break, end of the morning session, we were
23 discussing how you went from 900 million roughly to zero
24 and I believe your testimony was sabotage of
25 Mr. Blixseth and Mr. Blixseth giving you false numbers;

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1 is that correct?

2 A. That was part of it.

3 Q. What else?

4 A. Certain things not falling into place, certain
5 things that were told to be values that ended up not
6 being the values or having -- having difficulties in
7 being able to get those values out.

8 Q. Who told you about certain values that didn't
9 end up being values?

10 A. Part of it was what was turned over from the
11 things that I got from the MSA on trial balances and
12 that kind of thing that didn't balance.

13 Q. What trial balances did you get from the MSA
14 that didn't balance?

15 A. The BGI records.

16 Q. Okay. What in the BGI records didn't balance?

17 A. Specifically, I can't say, just some of the BGI
18 records of the things that were turned over. There was
19 also things in the MSA of -- just give you a small
20 example, because I can't think of everything without it
21 in front -- there was commissions for Big Springs Realty
22 that were 30 to 60 days in arrears when they were in
23 arrears much more than that.

24 Q. And you didn't know that?

25 A. I was aware of -- there was conflicting things

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1 going on, because in family court, as another example,
2 when I tried to object to the golf course lots with
3 CrossHarbor being sold, it was stated that there was no
4 commissions.

5 And then subsequent to that there was an Eric
6 Ladd commission that I had become aware of, so there
7 were some things, little bits and pieces, that I was
8 aware of and other things that I wasn't aware of.

9 Q. So give me some of the top five money things
10 that you weren't aware of that ended up sabotaging your
11 plans?

12 A. I can't think of a lot of things. One of the
13 things that ended up being huge now for me is that
14 Credit Suisse loan was a secured loan and now it's an
15 unsecured loan. That's pretty huge.

16 So I can't --

17 Q. As of the date of the MSA was it secured or
18 unsecured?

19 A. I believe it was still secured as of that date.

20 Q. Okay. Are you saying that because at some
21 point later on it became unsecured that led to your loss
22 of \$900 million in some way?

23 A. The totality of a whole lot of events led to
24 that.

25 Q. Okay. Can you identify any other events in

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1 that totality?

2 A. Not right now off the top of my head, no.

3 Q. Have you had any meetings with the liquidating
4 trustee?

5 A. I've never met the liquidating trustee.

6 Q. Any meetings with their lawyers?

7 A. Until today, no.

8 Q. Have you provided any documents or information
9 through yourself or a third party about the MSA or any
10 of the transactions involving the MSA?

11 A. I don't think the MSA is a party to that, so
12 I'm not aware.

13 Q. No.

14 Have you, through a third party such as a
15 lawyer or Mr. Russell or Ms. Yarborough or any third
16 party, provided any information to anyone on the side of
17 the liquidating trust?

18 A. I don't believe they've asked me for anything.

19 Q. We're going to get further into the sabotage
20 issues. Let's finish with Exhibit 30 and I have a
21 couple of questions.

22 You say in here between you and Peters, on the
23 third page, "You just want to keep things transparent
24 between you and me."

25 Did I read that correctly?

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1 A. I'm sorry, I'm just getting to where --

2 Q. At the end of that paragraph, about wanting to
3 keep things transparent between you and Peters?

4 A. Yes, I see that.

5 Q. As of April 15 in your prior relationship with
6 Peters had you kept everything transparent between the
7 two of you?

8 A. To the best of my knowledge. You know, whether
9 he was really real at this time or not, he was trying to
10 get bridge loans and loans to take out some of these
11 things and take the pressure off.

12 When you asked me on the very first page with
13 Leon, that's what I was referring to. I didn't know
14 which that loan was.

15 Q. Was part of that transparency to leak stuff to
16 the press and blame Tim for the leaks?

17 A. Absolutely not.

18 Q. Is that in an email that you exchanged with
19 Peters and Fultz?

20 A. Not that I had anything to do with it.

21 Q. So if it was sent to you and then you replied,
22 are you saying that wasn't part of a plan that you
23 engineered and then subsequently invited a member of the
24 Associated Press up to one of your properties in Montana
25 who thereafter released an article?

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1 You had nothing to do with that?

2 A. Not only did I not have anything to do with
3 that, that is not a true statement. That's been said by
4 Tim in court before. I told him when we were talking
5 that that's chasing shadows, because that didn't happen.
6 I think you're referring to Matt Brown and that
7 absolutely didn't happen.

8 Q. Okay. We'll see.

9 Did you call Gary Peters phoney?

10 A. Did I call him a phoney? Give me a time frame.

11 Q. At any time. Do you consider Gary Peters to be
12 a phoney?

13 A. I do now consider him to be a phoney, yes. I
14 didn't at the time that I thought he was going to
15 perform.

16 Q. So when you filed your motion to intervene in
17 the Lemond case -- which, parenthetically, Steve Byrnes
18 had, basically, destroyed the value of the Yellowstone
19 Club -- when you filed that motion?

20 MR. BLIXSETH: Sam Byrne.

21 MR. FLYNN: I mean Sam Byrne.

22 Q. When you filed that motion on April 4th, 2008,
23 within days after the Yellowstone Club deal cratered,
24 when you filed that motion did you believe Gary Peters
25 was a phoney at that point in time?

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1 A. No, I did not. I didn't believe he was a
2 phoney at the mediation just before that either.

3 Q. When you filed that motion to intervene, were
4 you counting on getting \$50 million from Gary Peters in
5 order to take over the Yellowstone Club?

6 A. To interject -- to interject the needed cash
7 flow and cash for what was needed to be done at
8 Yellowstone Club, yes.

9 Q. Do you have any comprehension -- forgetting
10 Mr. Byrne's testimony for the moment under oath -- of
11 what happened to the value of the Yellowstone Club on or
12 after April 4th when you filed that 200-page Motion to
13 Intervene in Lemond?

14 A. I'm not clear on your question.

15 Q. Yeah.

16 Do you know the adverse impact on the
17 Yellowstone Club in the media when you filed that
18 motion?

19 A. There had already been such bad press between
20 the Lemond litigation and the divorce that that probably
21 added to it, but there had been nonstop for -- since --
22 since just shortly after January of '07 negative press
23 about Yellowstone Club.

24 Q. Did you believe on or about April 4th when you
25 filed that motion, which we'll get into -- which,

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1 parenthetically, Byrne says destroyed the Yellowstone
2 Club in essence -- when you filed that motion, you did
3 so on the basis that Peters was going to come up with
4 50 million in cash immediately and 500 million to buy
5 the club; is that correct?

6 A. There were -- it was a two-prong step. We
7 don't know about the 500 million. That was a
8 possibility that he had brought up.

9 The first prong was that what needed to be put
10 into Yellowstone Club to stabilize the cash flow and pay
11 the creditors, address the B shareholders, that kind of
12 thing, was the original 50.

13 Q. Now do you recall, and we've got the document
14 here, that Byrne terminated the loan on March 26?

15 A. Terminated the loan?

16 Q. Terminated the purchase of the Yellowstone Club
17 on March 26, '08. Do you recall that?

18 A. I don't recall the date. I recall a
19 conversation that I had with Tim, that he was talking to
20 Byrne and telling him that if he didn't show that they
21 had the funds there to close that he was going to
22 force --

23 Q. All I need right now is whether you recall the
24 date.

25 A. But I don't recall the date.

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1 Q. March 26.

2 Do you know two days later on March 28 you and
3 your lawyers had a 200-page document prepared with your
4 declarations and Peter's declarations to intervene on
5 the Lemond case?

6 A. I don't remember it being that close.

7 There was a time frame from the question you
8 just asked me, though, which is the reason I wanted to
9 state what I was stating. There was a time differential
10 from when everything came down to actually culminating
11 and CrossHarbor saying that they were not going to go
12 forward and the date Tim gave them as drop-dead-show-us-
13 that-you-have-the-money and then they responded that
14 they were not doing it.

15 Q. Now let me see if we can focus in on the dates
16 and we've got the documents, so we'll get into it, but I
17 need to focus in on the dates for a minute here.

18 Do you recall Gary Peters being in Sam Byrne's
19 office as your representative on March 21, 2008, when
20 you were in court testifying that you were doing nothing
21 to interfere with the Yellowstone Club sale?

22 Do you recall that date?

23 A. I don't recall that happening at the same time,
24 no.

25 Q. Okay. Do you recall Peters going to Sam

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1 Byrne's office at your behest as your representative?

2 A. I -- Gary Peters did go and meet with Sam. Sam
3 had said -- I had introduced Gary to Sam at Yellowstone.

4 Q. I don't need any more --

5 A. -- but I do. I can't answer it that way then.

6 Q. Fine then you can't answer that.

7 A. Then take my answer away, because I can't
8 answer the question.

9 Q. Then five days later the deal cratered. Do you
10 remember that? Five days after Peters is in the office,
11 the deal craters.

12 A. Well, Gary -- I don't remember if it was five
13 days. Gary had conversations with Tim Blixseth and Bob
14 Sumptner after meeting with Sam Byrne.

15 Q. You don't remember, fine. That's all I need
16 for now.

17 Do you remember between March 21, roughly, this
18 time frame, and when the deal is cratering you
19 negotiating with Gary Peters to come up with
20 \$500 million to buy the club?

21 A. Gary came to me and said he might have somebody
22 that is interested and I said, "If there's somebody
23 interested and it's a real deal, put it in writing and
24 we'll see."

25 Q. Two days after the deal craters -- and we'll

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1 get into the exhibits -- two days later you've got a
2 200-page motion based on Peters putting 500 million in.

3 Do you remember that?

4 A. No. I remember the 50 million.

5 Q. The 50 million was the bridge and the
6 500 million was the purchase.

7 You don't remember that?

8 A. The purchase was never something that was an
9 actual offer that was put in.

10 Q. Now at the time were you telling people,
11 members of the club, and sending emails when you were in
12 default on all these loans that we went through that you
13 had the money to purchase the club?

14 A. I think that I said that I was able to come up
15 with the money to purchase the club. I didn't say I had
16 the money to purchase the club.

17 Q. And how many banks were you in default with
18 when you were telling people at the club that you had
19 the money to purchase the club?

20 A. That's apples to oranges.

21 Q. Okay. Let's go to the next page. We have to
22 move quickly here. Let's go to the next page in emails.

23 And you write on this page dated May 5th,
24 "That's their MO. He wrote back after my answer to him
25 to contact him this afternoon. I will do what I can to

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1 stall."

2 Stall what? Stall paying him?

3 A. I don't know based on what I'm reading. I have
4 no idea.

5 Q. You don't know what you meant?

6 A. Based on what you have in front of me, I don't
7 know what that meant.

8 Q. Were you trying to stall from paying American
9 Bank?

10 A. Based on what you have in front of me, I can't
11 tell what this means.

12 Q. Regardless of what's in front of you, based on
13 this time frame, early May '08, were you trying to stall
14 from paying American Bank?

15 A. What I wrote was that I should be able to
16 transfer money based on what Gary was saying and then I
17 wasn't going to have the money. I might be trying to
18 buy some time hoping the money was coming in for that,
19 but that's a guess on my part.

20 Q. Then you say, "I'd rather it come out next week
21 after Monday," and you put, in caps, "AFTER." What's
22 that all about, Ms. Blixseth?

23 A. I have no idea.

24 Q. What did you want to come out in the media
25 after Monday?

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1 A. I have no idea. I don't even know if that
2 means media.

3 Q. Let's read down further on a prior email.
4 That's at 12:32 this one is 12:30, two minutes before,
5 to you. "Edra, I understand clearly the banker is
6 almost threatening you which is illegal with the press
7 issue. Keep me posted on the wire. I'm still working
8 on the bridge to find comfort."

9 What's that all about, Ms. Blixseth, that
10 American Bank was threatening you with press?

11 A. I don't know.

12 Q. Were you trying to keep the fact that American
13 Bank had forestalled for three or four months from
14 filing a lawsuit against you for default on the loan and
15 you didn't want it to come out if they filed the
16 lawsuit?

17 A. I'd have to -- if we can read these where I can
18 read all of them and then you can ask me questions it
19 might be easier, because until I read what was written
20 before or after I don't know how to answer.

21 Q. So you don't remember, is the answer to my
22 question, whether it was because they were threatening
23 to sue you. Because Peters is saying, "That's a threat,
24 which is illegal with the press issue." You don't
25 remember what that was about?

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1 A. Not exactly.

2 Q. Okay. Let's go on.

3 Then you just -- you write an email to Peters
4 the same day and you say, "Gary, this is what I am
5 dealing with. He knows this kind of press will hurt me
6 in court next week. 'Edra's offering to put in
7 50 million, but is in default of 7 million with American
8 Bank.'" You put that in quotes.

9 "I made a deal with them last week before I
10 knew that the bridge loan was in trouble to 2 million in
11 interest current and the 5 million in 30 days. I knew
12 that would give me time to put my LOC together on PC."

13 Now this part in quotes, "Edra is offering to
14 put in 50 million but is in default of 7 million with
15 the American Bank loan," what's that all about,
16 Ms. Blixseth?

17 A. I don't know, but while you were reading I read
18 ahead to what Leon had written on the next page so I can
19 only then surmise that what I am saying to Gary is that
20 Leon is threatening for that to come out that I'm
21 defaulting on loans with American Bank at the same time
22 that I'm saying I can put 50 into Yellowstone Club.

23 Q. Yeah.

24 In other words, you had been in court and filed
25 affidavits, which we've got here, saying you had all the

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1 money to buy the Yellowstone Club and you yet were in
2 default on this loan.

3 A. That was --

4 Q. You don't see, Ms. Blixseth, some contradiction
5 or hypocrisy in doing that? Do you see any -- any lack
6 of responsibility on your part in representing in court
7 that you got \$500 million to buy the Yellowstone Club
8 and you're in default of over \$2 million and the bank
9 saying we're going to sue you for it?

10 A. Tell me when you're done speaking your
11 statement.

12 Q. I'm done.

13 A. Okay.

14 Q. Do you see any contradiction or hypocrisy?

15 A. You're making a statement. What's your
16 question? Do I see any hypocrisy?

17 Q. Yeah.

18 A. Okay. Now I'd like time to answer. It's
19 apples to oranges. If I didn't have the Yellowstone
20 Club to have for someone to either look at a purchase or
21 look at putting money into it -- that wasn't putting
22 money into Edra Blixseth or taking care of Edra
23 Blixseth's personal issues, it was taking care of the
24 Yellowstone Club's person issues that had assets that
25 they could deal with.

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1 That wasn't money that was going to me to solve
2 my personal issues. If I could solve Yellowstone Club's
3 issues, then long-term that would help solve my issues
4 as Yellowstone Club would be stabilized then and have
5 value.

6 So no, I don't see hypocrisy in it. I see that
7 I'm working my damndest to try to make an asset have a
8 value rather than not have a value because it
9 desperately needed money. Nobody would give me that
10 amount of money, directly to me.

11 Q. You didn't own Yellowstone Club at the time you
12 were making the --

13 A. It was a community property asset. I owned
14 half of the asset.

15 Q. Were you telling Royer, "Don't worry. I'll get
16 control of the club and then I'll get the money and I
17 can pay you"?

18 A. Absolutely not.

19 Q. Were you telling Royer that -- at that time did
20 you make those representations to other people at other
21 times?

22 A. Absolutely not. That's not what I filed and I
23 didn't make those representations to anyone. No.

24 Q. We'll see.

25 Did you write up an executive summary in which

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1 before you even got the club you said, "Once I'm in
2 control of the club, I can do this, that and the other
3 thing"?

4 A. I don't remember that, but there was a
5 hypothesis going on of not knowing how the assets were
6 going to end up being divided.

7 Q. Let's go to the next -- then Royer runs through
8 the amounts you owe him that you've been promising to
9 pay him for some period of time. We'll find out from
10 his records when we get them.

11 And then Royer writes, "During the period that
12 we were working on Blue Sky, we stopped the legal action
13 concerning the collection of your personal debt."

14 Did he stop legal action against you,
15 Ms. Blixseth?

16 A. I'm just reading this. I don't think there was
17 ever a legal action started. Am I on the wrong page?

18 Ah, sorry. It was on the wrong page.

19 Q. Did he tell you that --

20 A. Can I get time to get caught up here? Because
21 I was on the wrong page.

22 Q. I'll read it into the record.

23 A. I just --

24 Q. You can keep reading. "During that time," this
25 is Royer talking, "I read a news article which said

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1 'Edra's attorney, Deborah Klar, insists that Edra and
2 BFI were the best answer to the settlement case,
3 because,'" in bold and underlined, "'she has immediate
4 access to money to pay the settlement. Not only that,
5 Klar said Edra has access to enough capital to deal with
6 a looming \$375 million from the investment bank Credit
7 Suisse.'"

8 "Imagine my surprise to learn that such a
9 statement had been made in court, yet we cannot obtain
10 our past-due payments. Today we are restarting that
11 process."

12 Now having read that and put that in the
13 record, I take it from your prior testimony that doesn't
14 indicate to you deceit or deception --

15 A. No, it does not.

16 Q. -- on the one part to the bank, when you
17 didn't --

18 A. Can you read into the record my response?

19 Q. -- when you were trying to obtain control of
20 Yellowstone Club and represented that you had all this
21 money?

22 And, in fact, Ms. Blixseth, you didn't have the
23 money, did you? You had promises from Gary Peters;
24 isn't that true?

25 A. I thought I had money based on --

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1 Q. Thank you.

2 A. Are you going to read into the record my
3 response which clearly nullifies what you just said my
4 intent was?

5 Q. I'll let your lawyer do it. I believe it adds
6 to the deception.

7 You write, "Leon, as I am sure you are aware,
8 there is a difference in having access to funds for an
9 asset that I own or have control over than funds when I
10 do not."

11 You're admitting there you didn't have control
12 over the Yellowstone Club, is that what you're doing, or
13 control over this 500 million from Peters?

14 Is that what you're doing?

15 A. No. I didn't have control over it in order to
16 solve my personal issues with American Bank.

17 Q. "If I am successful in the new case" -- that's
18 the intervention in Lemond -- "I have these funds
19 available for Yellowstone Club."

20 Was that true?

21 A. I believed it to be true when I wrote this.

22 Q. Did you actually have the funds?

23 A. I believed I had letters supporting and I had
24 documents supporting that I had the funds.

25 Q. But did you have the funds?

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1 A. I believed I had the funds available if that
2 went through.

3 Q. No. Ms. Blixseth, it's a simple question.

4 Did you, Edra Blixseth, have the funds?

5 A. It's the same answer as did -- CrossHarbor says
6 that they can close and have the funds available, but
7 didn't have them in the account to be able to show Tim
8 that they had the account. It's the same thing.

9 I believed I had the funds if that were to go
10 through to have the funds to put into Yellowstone Club.

11 Q. Then you write at the end --

12 A. Read the next line. "They're not for Edra
13 Blixseth, personally." You keep saying that I was
14 deceiving by saying I had all this money but that I
15 wasn't taking care of my personal obligations.

16 I responded to what you read into the record by
17 telling him that was not for me to use personally.

18 Q. Did you deceive Wachovia Bank when you didn't
19 inform them there was litigation pending, Ms. Blixseth?

20 A. No.

21 Q. Did you deceive Western Capital Partners in
22 June of '08 when you didn't inform them there was
23 litigation pending?

24 A. I think I've answered this how many times now?

25 MR. HOLAHAN: Many.

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1 MR. FLYNN: Let's mark this next one, Order to
2 Show Cause.

3 (Exhibit 31 was marked for identification.)

4 BY MR. FLYNN:

5 Q. And we can go very quickly on this. You don't
6 have to read the whole document. I would -- simply
7 going to read into the record a short part.

8 This is the federal court in Nevada relating to
9 the Trepp litigation and the technology that you were
10 paying Montgomery a hundred thousand dollars a month on.

11 A. I was paying Montgomery a hundred thousand a
12 month and before that, if you remember, I was paying you
13 hundreds.

14 Q. Ms. Blixseth, I didn't --
15 Move to strike.

16 Ms. Blixseth, did you know as of late June that
17 the court was issuing an order to show cause for the
18 failure of you and Montgomery to turn over the source
19 code for the technology Montgomery claimed he owned?

20 A. Does it say me?

21 Q. You were a party. It only says Montgomery and
22 Deborah Klar, but you were a party, were you not?

23 A. I was brought into this. I saw this and this
24 never says Edra. I didn't have the source code to turn
25 over.

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1 Q. So to this day has the source code ever been
2 turned over?

3 A. You've asked me that three times and my answer
4 is the same.

5 Q. I'll withdraw it.

6 Does the source code even exist, Ms. Blixseth?

7 A. I have every reason to believe it exists.

8 Q. What reason do you have to believe that it
9 exists?

10 A. Because Dennis Montgomery is able to make
11 things work when asked to make work by different people.

12 Q. Do you know that on four occasions the
13 United States Government has asked Montgomery to
14 demonstrate the source codes to show that the technology
15 worked and that every single time, twice at eTreppid and
16 twice with you, he's walked out of the meetings and
17 left.

18 You know, Ms. Blixseth, do you not, there's no
19 technology.

20 A. No, I do not believe that.

21 Q. So --

22 A. Just a second. You make statements, Mike, and
23 then you don't let me respond to them. I can't tell if
24 you're asking me questions or --

25 Q. We're going to move on, because they're all

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1 going to come together.

2 A. Okay.

3 Q. With regard to this Order to Show Cause, did
4 Montgomery come to you or send you emails and say,
5 "There's going to be contempt hearings requiring me to
6 produce the source code and I'm not going to do it"?

7 Did he say those kinds of things to you either
8 in person or in the email?

9 A. He said to me that he didn't want to turn over
10 the source code because he felt that then the -- either
11 the government or somebody else would have the source
12 code and be able to circumvent him or us getting paid.
13 He did make those comments.

14 MR. FLYNN: Okay. Next Exhibit 32.

15 (Exhibit 32 was marked for identification.)

16 BY MR. FLYNN:

17 Q. Did you know after three or four days of
18 evidentiary hearing in which you were subpoenaed at one,
19 the United States Federal District Court in Nevada on
20 August 18th, after --

21 A. What year, sorry?

22 Q. 2000- --

23 A. I see it. Okay.

24 Q. -- 2008.

25 A. '-8.

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1 Q. Same time that -- same time that you were
2 taking the \$35 million from Sam Byrne -- issued an order
3 imposing \$2500 a day in penalties until the source code
4 was produced?

5 A. Was this against Liner or Dennis? Sorry, I
6 can't figure --

7 Q. If you go to the last -- second page from the
8 back, "Therefore, it is ordered that a monetary contempt
9 sanction is imposed against Dennis Montgomery in the
10 amount of \$2,500 a day from the date of the failure to
11 comply, July 23, 2008, through the date the production
12 actually occurs."

13 Did you know that penalty was being imposed,
14 Ms. Blixseth?

15 A. I think I did hear about that and there was a
16 lot of stuff going back and forth about Dennis having
17 problems gathering what they were asking for with the
18 DOJ restrictions on what could be turned over but --

19 MR. HOLAHAN: DOD?

20 THE WITNESS: No, the DOJ at the time.

21 MR. HOLAHAN: Okay.

22 THE WITNESS: But I don't -- and I remember
23 this happening, but I don't remember the amount and I
24 don't remember the exact dates.

25 ///

1 BY MR. FLYNN:

2 Q. This was happening right around the time you
3 got the \$35 million from Byrne. Did you tell Montgomery
4 you would pay the \$2500 a day?

5 A. No, I did not.

6 Q. Did he tell you he didn't have the money to pay
7 the \$2500 a day and wanted you to pay it?

8 A. He may have said he didn't have the money to
9 pay it, but the 35 million was all earmarked for
10 everything for Yellowstone Club.

11 Q. Now did Montgomery threaten you during this
12 period of time to pay the 2500?

13 A. Threaten me in what way?

14 Q. In any way.

15 A. I don't think Dennis has ever threatened me.

16 Q. Did he threaten you in connection with exposing
17 any computer hacking you had done?

18 A. Absolutely not.

19 Q. He had done for you?

20 A. Absolutely not.

21 Q. Did he hack into Mr. Blixseth's computers with
22 regard to alleged Cayman Islands accounts during the
23 proceedings and inform you that Tim Blixseth had
24 accounts in the Cayman Islands; that he had picked
25 off -- hacked into the bank accounts in the Cayman